

Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
COMMITTEE REPORT
1350 Pennsylvania Avenue, N.W., Washington, DC 20004

To: Members of the Council of the District of Columbia

From: Councilmember Charles Allen **CA**
Chairperson, Committee on the Judiciary and Public Safety

Date: October 4, 2018

Subject: Report on Bill 22-0408, the "Fare Evasion Decriminalization Amendment Act of 2018"

2018 OCT 10 AM 10:52
OFFICE OF THE
SECRETARY

The Committee on the Judiciary and Public Safety, to which Bill 22-0408, the "Fare Evasion Decriminalization Amendment Act of 2018"¹, was referred, reports favorably thereon and recommends approval by the Council of the District of Columbia.

CONTENTS

Statement of Purpose and Effect _____	Page 2
Legislative History _____	Page 15
Position of the Executive _____	Page 16
Advisory Neighborhood Commission Comments _____	Page 16
Witness List and Hearing Record _____	Page 16
Impact on Existing Law _____	Page 18
Fiscal Impact _____	Page 19
Section-by-Section Analysis _____	Page 19
Committee Action _____	Page 19
List of Attachments _____	Page 20

¹ The title of the bill has been updated to reflect the current year and that its provisions are amendatory.

STATEMENT OF PURPOSE AND EFFECT

I. Purpose and Effect

Bill 22-0408, the “Fare Evasion Decriminalization Amendment Act of 2018”, was introduced on July 11, 2017, by Councilmembers Trayon White, Anita Bonds, Mary Cheh, David Grosso, Kenyan McDuffie, Brianne Nadeau, Elissa Silverman, and Robert White. On the same day, the bill was referred to the Committee on the Judiciary and Public Safety with comments from the Committee on Transportation and the Environment and the Committee on Finance and Revenue. This Committee held a public hearing on the bill on October 19, 2017.

As introduced, B22-0408 proposed to amend the Act to Regulate Public Conduct on Public Passenger Vehicles, effective September 23, 1975 (D.C. Law 1-18; D.C. Official Code § 35-251 *et seq.*), to make the offenses of failure to pay the established fare on a public passenger vehicle, to present a valid transfer, or to board through the rear door, civil offenses punishable by a fine of not more than \$100. The current penalty is not more than \$300, imprisonment for not more than ten days, or both.² In practice, the Washington Metropolitan Area Transit Authority (“WMATA” or “Metro”) either issues warnings, citations of \$50, or makes arrests.

After careful deliberation, the Committee Print maintains the introduced version’s decriminalization of fare evasion, but instead of a \$100 fine, the Print conforms to WMATA’s current practice by setting a \$50 maximum civil fine. The Print additionally makes corresponding amendments to the District’s theft³ and unlawful entry of a motor vehicle⁴ statutes to provide that fare evasion cannot be alternately prosecuted under those sections of the Code. Further, the Committee Print decriminalizes a list of minor “unlawful conduct on public passenger vehicles”, which includes such conduct as playing a radio, carrying a smoldering pipe, operating roller skates, and eating or consuming food or beverages. Such conduct will also now carry a maximum \$50 civil fine. The Print maintains the criminal penalties for carrying any flammable or combustible liquids, explosives, acids, or similar items inherently dangerous or offensive to others; causing the doors of a train car to open by activating a safety device; and interfering with an escalator or elevator.⁵

² D.C. Official Code § 35-253.

³ D.C. Official Code § 22-3211.

⁴ D.C. Official Code § 22-1341.

⁵ This prohibition includes an exception for emergency circumstances.

II. Committee Reasoning

a. *Background*

The Act to Regulate Public Conduct on Public Passenger Vehicles prohibits a wide array of conduct in “rail transit stations”⁶ and on “public passenger vehicles”⁷ and “rail transit cars”⁸, including (1) to smoke or carry a lighted or smoldering pipe, cigar, or cigarette; (2) consume food or drink; (3) spit; (4) discard litter; (5) play a radio, cassette, recorder, musical instrument or “other such device” unless connected to headphones; (6) carry flammable or combustible liquids, live animals, explosives, acids, or “any other item inherently dangerous or offensive to others”; (7) stand in front of the white line on a bus or otherwise obstruct a driver’s vision; (8) park, operate, wheel, or chain to any fence, tree, railing, or other structure not specifically designated for such use, tricycles, unicycles, skate-boards, or roller skates; (9) park, operate, carry, wheel, or chain to any fence, tree, railing, or other structure not specifically designated for such use, mopeds, motorbikes, or any other such vehicle; and (10) surprisingly, park, operate, carry, wheel, or chain to any fence, tree, railing, or other structure not specifically designated for such use, non-collapsible bicycles without a permit from WMATA.⁹ At the time the law was passed, violations of this section were punishable by a fine between \$10 and \$50 for the first offense and between \$50 and \$100, or ten days imprisonment, or both, for the second and subsequent offenses. The penalties remain unchanged in current law.¹⁰ The Act also criminalizes knowingly causing the doors of a rail transit car to open by activating an emergency safety device,¹¹ or tampering with an escalator or elevator.¹² The penalty for these two offenses is a fine of not more than \$300, imprisonment of not more than 90 days, not fewer than 30 hours of community service, or a combination of any two penalties (except that imprisonment and community service cannot be imposed together).¹³

In 1977, the Council passed the District of Columbia Transit Fare Payment Act of 1977, effective February 22, 1978 (D.C. Law 2-40), which enacted into statute a 1972 regulation of the appointed Council¹⁴ to add fare evasion to the list of prohibited conduct above, with the fine as it is today.¹⁵ The statute has not been amended since its passage.

⁶ “Rail transit station” means “a regular rail stopping place for the pick-up and discharge of passengers in regular route service, contract service, special or community-type service, including the fare-paid areas and roofed areas of the rail transit stations (not bus terminals or bus stops) owned, operated, or controlled by the Washington Metropolitan Area Transit Authority; provided, that the term “rail transit station” shall not include parking lots, roadways and other areas intended for vehicle traffic.” D.C. Official Code § 35-251(a).

⁷ “Public passenger vehicle” is not a defined term.

⁸ “Rail transit car” is also undefined.

⁹ D.C. Official Code § 35-251(b).

¹⁰ D.C. Official Code § 35-253.

¹¹ D.C. Official Code § 35-251(c).

¹² *Id.* at (d).

¹³ *Supra*, note 10.

¹⁴ Appointed Council of the District of Columbia, Regulation No. 72-7, Requirement of Payment of the Established Fare on any Motor Bus Operating in the District of Columbia, 40 (May 5, 1972), available at http://dccouncil.us/Regulations_1972_Final.pdf.

¹⁵ See, <https://code.dccouncil.us/dc/council/laws/docs/2-40.pdf>.

The current statutory penalty for fare evasion is 133 times the Metrorail base fare during peak hours. The base fare is \$2.25, with a \$6.00 maximum; during off-peak hours, the base fare is \$2.00 minimum and \$3.85 maximum.¹⁶ Seniors, individuals with disabilities, and customers with a Medicare card and valid photo identification ride for half the peak fare with a reduced fare SmarTrip card.¹⁷ The Metrobus fare for regular routes is \$2.00.¹⁸ Fares for seniors and individuals with disabilities are \$1.00 for regular routes and \$2.10 for express routes.¹⁹

At the time of the Committee's hearing on B22-0408, WMATA and the District government were using student D.C. One Cards to provide free fares for students between the ages of 5 and 21 through the Kids Ride Free Program; this program has now transitioned to exclusively using a Kids Ride Free Program SmarTrip card. In the 2017-2018 school year, 58,925 students were issued a D.C. One Card, and of those students, 25,697 students loaded the Kids Ride Free pass onto the D.C. One Cards.²⁰ As of September 24, 2018, the District Department of Transportation had ordered 42,000 Kids Ride Free SmarTrip cards from WMATA for the school year, and only 23,808 students had received them.²¹

b. *Committee Print*

*Mass incarceration is the result of small, distinct steps, each of whose significance becomes more apparent over time, and only when considered in light of later events.*²²

Many District residents have shared their views with the Committee about B22-0408's proposal to decriminalize fare evasion, with most in support but some in opposition. Without exception, they spoke to values of fairness, justice, equity, and efficacy – and all residents expressed their desire to support WMATA and the Metro system in light of the safety, maintenance, ridership,²³ and affordability challenges it is facing. Residents also shared their beliefs that all Metro riders should contribute to the system and be held accountable for their actions. The Committee wholeheartedly agrees, but continued criminalization is not the answer.

¹⁶ See, <https://www.wmata.com/fares/basic.cfm>.

¹⁷ See, <https://www.wmata.com/fares/rail.cfm>.

¹⁸ *Supra*, note 16.

¹⁹ *Id.*

²⁰ Letter from Rashad Young, City Administrator, to Councilmember David Grosso (Sept. 24, 2018), on file with the Committee; for background on the low utilization of the D.C. One Card among DCPS students, see Martine Powers, *Metro wants to switch D.C. students' ride passes to SmarTrip cards. It's not as easy as it sounds*, WASH. POST (Feb. 10, 2018), available at https://www.washingtonpost.com/local/trafficandcommuting/metro-wants-to-switch-dc-students-ride-passes-to-smartrip-cards-its-not-as-easy-as-it-sounds/2018/02/10/d7cf7dce-0b7b-11e8-8890-372e2047c935_story.html?utm_term=.d2844e64535f.

²¹ City Administrator Young states in the letter that the District had ordered more SmarTrip cards than necessary, but he does not detail the number of students who have not received them but rely on public transportation.

²² James Forman, Jr., *Locking Up Our Own: Crime and Punishment in Black America* 45 (2017).

²³ A new analysis of Metro ridership showed that declines are most significant among riders ages eighteen to twenty-nine. Between April 2016 and April 2018, riders age twenty-nine and under took twenty-one percent fewer trips on Metro. On weekends, the number was forty percent fewer, when compared to the same month two years prior. The Committee notes that 45% of those arrested for fare evasion during a similar period were youth under age twenty-five. See, Faiz Siddiqui, *Behind Metro's driving ridership: A millennial exodus*, WASH. POST (Sept. 15, 2018), available at https://www.washingtonpost.com/transportation/2018/09/15/guess-whos-killing-metro/?utm_term=.c42fbfe043b3.

The criminalization of minor unwanted conduct is significantly more harmful than the failure to pay a \$2 fare. Fare evasion enforcement is almost exclusively against black people, the use of force by Metro Transit Police in making fare evasion arrests harms public trust in law enforcement, and the resulting arrests and convictions create lifelong barriers to jobs, housing, and higher education. Most importantly, there is no evidence that criminalization is even effective in preventing future fare evasion or other criminal conduct. Arrests and convictions simply will not solve what is a matter of economics for low-income Washingtonians²⁴ – in fact, further criminal justice system involvement only perpetuates poverty. This is not to say that the underlying behavior is desirable, but rather that the District's response must be proportionate to the seriousness of the alleged conduct and be designed to effectively deter future unwanted conduct. For these reasons, the Committee Print decriminalizes fare evasion and similar minor conduct.

i. *The Continued Criminalization of Fare Evasion Is Racialized and Perpetuates the Mass Criminal Justice-System Involvement of District Residents of Color*

*Mass incarceration wasn't created overnight; its components were assembled piecemeal over a forty-year period [in the District of Columbia]. And those components are many. The police make arrests, pretrial service agencies recommend bond, prosecutors make charging decisions, defense lawyers defend[,] juries adjudicate (in the rare case that doesn't plead), legislatures establish the sentence ranges, judges impose sentences within these ranges, corrections departments run prisons, probation and parole officers supervise released offenders, and so on.*²⁵

A staggering number of District residents have had contacts with our criminal justice system, and the overwhelming majority of these residents are people of color. In 2016 alone, there were 44,175 arrests made by law enforcement agencies in the District for D.C. Code offenses, up approximately 8,000 from 2015.²⁶ Law enforcement agencies have arrested an estimated one in seven District residents in the past decade.²⁷ The number of convictions is similarly high: the Criminal Division of D.C. Superior Court processed 7,562 convictions in 2016, up almost 700 from 2015.²⁸ Judges in the Criminal Division have convicted approximately one out of every seventeen District residents in the last decade.²⁹

²⁴ A study by the Social and Decision Analytics Laboratory at the Biocomplexity Institute at Virginia Tech identified some of the social determinants of bus fare evasion. The study concluded that "all census blocks with a high number of fare evaders are economically vulnerable." See, <https://www.bi.vt.edu/sdal/projects/reducing-fare-evasion-on-public-transportation>.

²⁵ Forman, Jr., *supra*, at 13-14.

²⁶ Metropolitan Police Department, *Metropolitan Police Department Annual Report – 2016*, 32, https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/MPD%20Annual%20Report%202016_lowres.pdf.

²⁷ Criminal Justice Coordinating Council, *Justice-Involved Citizens in the District of Columbia* (release forthcoming).

²⁸ *Id.*

²⁹ *Id.*

The Metro Transit Police Department (“MTPD”) is newly driving much of this involvement, despite continued decreases in crime in the Metro system and in the District at large. Between 2013 and 2017, reported Part 1 crimes – crimes like homicide, aggravated assault, burglary, larceny, rape, and robbery – dropped significantly in the Metro system, from 2,125 in 2013 to 1,282 in 2017, representing a 39% decrease (*see* Table 1 below).³⁰ At the same time, enforcement has increased exponentially from 2013, including a significant jump in 2017, with 1,884 arrests in 2013 and 3,266 in 2017 (a 73% increase) (*see* Table 2 below).

Table 1: Part I Crimes Reported on the Metro System, 2013-2017

Part I Crimes	2013	2014	2015	2016	2017
<i>Aggravated Assault</i>	109	108	116	148	108
<i>Arson</i>	2	3	1	3	0
<i>Attempted Motor Vehicle Theft</i>	32	35	26	18	11
<i>Burglary</i>	2	4	0	2	0
<i>Homicide – MTPD</i>	0	0	0	1	0
<i>Homicide – Other Agencies</i>	0	0	2	4	0
<i>Larceny</i>	791	697	697	703	631
<i>Larceny (Snatch/Pickpocket)</i>	695	359	379	305	223
<i>Motor Vehicle Theft</i>	62	72	50	58	32
<i>Rape</i>	1	2	0	6	2
<i>Robbery</i>	431	282	384	336	275
Total	2,125	1,562	1,653	1,580	1,282

*Source: MTPD*³¹

Table 2: WMATA MTPD Enforcement, 2013-2017

Enforcement Efforts	2013	2014	2015	2016	2017
<i>Arrests</i>	1,884	2,017	2,167	2,710	3,266
<i>Citations/Summonses</i>	5,407	4,382	5,287	7,330	15,691
<i>Written Warnings</i>	1,143	1,524	1,740	3,925	3,493
Total Enforcement Efforts <i>Specifically for Fare Evasion</i>	4,069	3,662	4,751	6,733	15,348

*Source: MTPD*³²

Fare evasion stops, citations, and arrests, specifically, have increased by 277% since 2013, and a closer look at the data reveals disturbing trends and stark racial disparities (the Committee notes that in his response to a November 2017 letter from Chairperson Allen to MTPD Chief Ronald Pavlik, Chief Pavlik declined to provide any requested information about the racial or age demographics of those warned, cited, or arrested).³³ A September 2018 report from the

³⁰ In 2017, most crimes on Metro were on committed on rail, followed by parking lots and then bus stops.

³¹ *See*, <https://www.wmata.com/about/transit-police/upload/Five-Year-Crime-Report-2013-2017.pdf>.

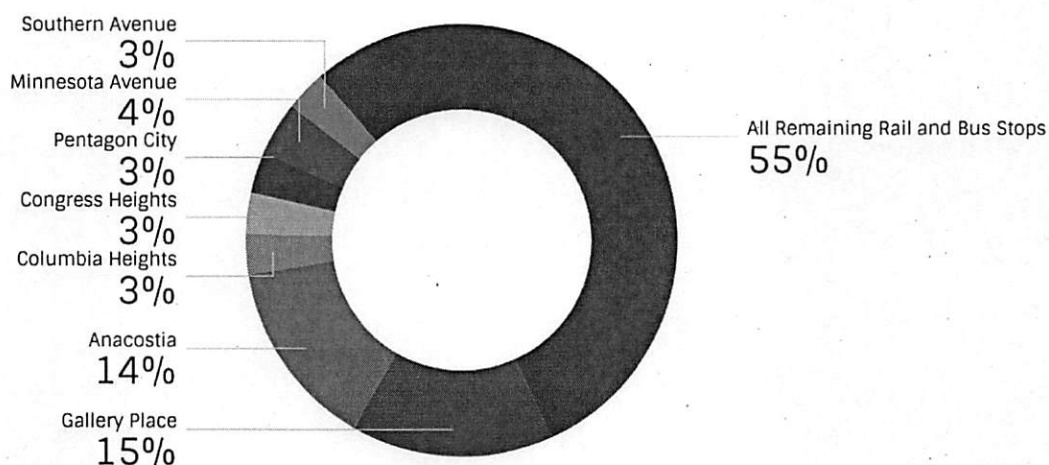
³² *Id.*

³³ *Letter from Councilmember Charles Allen to Metro Transit Police Department Chief Ronald Pavlik* (Nov. 14, 2017), on file with the Committee.

Washington Lawyers' Committee for Civil Rights and Urban Affairs found that between January 2016 and February 5, 2018:³⁴

- MTPD stopped more than 30,000 individuals for suspected fare evasion and issued more than 20,000 citations/summonses.
- The number of individuals who were cited more than doubled between 2016 and 2017.
- The percentage of individuals who were given a citation/summons instead of a warning has significantly increased, from 59% of individuals stopped in 2016 to 80% in 2017.
- Ninety-one percent of citations/summons were issued to black people: 72% were issued to black men, and approximately another 20% to black women. Forty-six percent of all citations issued by MTPD for failure to pay were issued to black people under age 25.
- MTPD arrested more than 2,000 individuals after contacts that began with a fare evasion stop.
- Fare evasion enforcement is concentrated at certain Metro stations in the District, with 15% of all stops in or around Gallery Place and 14% in or around Anacostia (*see* Graphic 1). Ninety-five percent of the people issued warnings or citations/summons at these two stops were black.

Graphic 1: All Stops in Which Warnings or Citations/Summonses Were Given, By Bus and Rail Stop



These figures include both Metrobus and Metrorail riders.

Of the 55% of stops that occurred at the remaining rail and bus stops, less than 1% of the stops occurred at each stop

Source: Washington Lawyers' Committee³⁵

³⁴ Marques Banks and Emily Gunston, *UNFAIR: Disparities in Fare Evasion Enforcement by Metro Police*, Washington Lawyers' Committee for Civil Rights and Urban Affairs (Sept. 13, 2018), available at <https://www.washlaw.org/news/764-the-committee-releases-report-on-shocking-disparities-in-fare-evasion-enforcement-by-metro-police>.

³⁵ *Id.* at 9.

Fare evasion convictions are few, but the number charged in court by the Office of the Attorney General is not insignificant.

Table 3: Disposition of Fare Evasion Arrests by the Office of the Attorney General, 2015-2017

<i>Year</i>	<i># of Arrests</i>	<i>Papered (Prosecutor Filed Charge)</i>	<i>No Papered (Declined to File Charge)</i>	<i>Nolle (Prosecutor Withdrew Charge)</i>	<i>Post & Forfeit (Paid Fine)</i>	<i>Plead Guilty</i>	<i>Adjudicated Not Guilty</i>	<i>Adjudicated Guilty</i>	<i>Case Dismissed</i>
2015	419	125	294	33	8	5	0	0	11
2016	712	223	489	68	45	46	1	3	20
2017	1,428	470	958	157	112	49	0	1	25

Source: Office of the Attorney General (note: this data may include matters where a defendant was found guilty of another charge)

The data bear out that mass criminal justice-system involvement and mass incarceration of communities of color are perpetuated by the overcriminalization of unwanted conduct, often low-level conduct such as the theft of a \$2 fare or eating on the train. And as discussed in the next section, this involvement extends long beyond the stop itself.

ii. *The Longlasting Collateral Consequences of Arrests and Convictions Do Not Justify the Continued Criminalization of Evading a \$2 Fare*

Collateral consequences of arrests or convictions are those penalties imposed on individuals with criminal records by rules, statutes, or practices ancillary to the original arrest or conviction. Collateral consequences erect significant barriers to stable employment, housing, and sustenance, and they also make recidivism more likely.³⁶ There are thousands of collateral consequences across the country and in the District, and they are all the more impactful here due to the large number of District residents who are or who have been justice-involved.³⁷

An individual's contact with the justice system is accompanied by countless publicly available documents, including records of arrest, formal charging decisions, and the final disposition of cases. In the District, documents that accompany a criminal case are generally accessible to the public.³⁸ These records remain available long after the disposition of the case or,

³⁶ See, Washington Lawyers' Committee for Civil Rights and Urban Affairs, *The Collateral Consequences of Arrests and Convictions under D.C., Maryland, and Virginia Law* (Oct. 22, 2014), http://www.washlaw.org/pdf/wlc_collateral_consequences_report.PDF.

³⁷ For a searchable database of collateral consequences in the District, see the Council of State Governments' National Inventory of the Collateral Consequences of Conviction, available at <https://niccc.csjusticecenter.org/search/?jurisdiction=13>.

³⁸ For a description of which D.C. Superior Court records are available electronically, see D.C. Superior Court, *eAccess User Guide*, available at <https://www.dccourts.gov/sites/default/files/eAccess-User-Guide-Updated.pdf>. Neither sealed nor confidential records are accessible via the eAccess platform. See D.C. Superior Court, *Frequently Asked Questions* (last visited Sept. 30, 2018), available at <https://www.dccourts.gov/sites/default/files/eaccess/eAccess-FAQs.pdf>. In addition to electronic access, public records are available on site. See *id.*

if the individual was convicted, after the successful completion of the sentence. Sources estimate that there are approximately seventy million Americans with a criminal record – one third of the adult population.³⁹

Regarding employment opportunities, collateral consequences can take two general forms. The first are legal prohibitions on certain types of employment for individuals with convictions for particular offenses. In the District, for example, applicants for occupational licenses cannot have been “convicted of an offense which bears directly on the fitness of the person to be licensed.”⁴⁰ Even if a candidate is not legally disqualified from employment on the basis of a conviction, many employers conduct background checks on candidates with the intention of avoiding legal liability for negligent hiring decisions, maintaining a safe workplace, preventing theft or embezzlement, or determining the overall trustworthiness of a potential employee.⁴¹ Consequently, and although the District has “banned the box” in employment,⁴² records of arrests or formal charging decisions – even those that did not result in conviction – can still serve as the basis for some adverse hiring decisions.

These are extremely serious consequences for the failure to pay a \$2 fare, and most District residents in support of fare evasion criminalization likely are not aware of the myriad ways in which collateral consequences impact District residents – or the large number of District residents which they impact. The current term of imprisonment for fare evasion – ten days in jail – is not only ten days in jail; it could be lifetime barrier to safe housing, secure employment, or even volunteering for your child’s school bake sale.⁴³ Even an arrest that is not charged in court can result in parole revocation⁴⁴ or deportation or could seriously interfere with an hourly worker’s ability to keep their job.

³⁹ See Gary Fields & John Emshwiller, *As Arrest Records Rise, Americans Find Consequences Can Last a Lifetime*, WALL ST. J. (Aug. 18, 2014), available at <https://www.wsj.com/articles/as-arrest-records-rise-americans-find-consequences-can-last-a-lifetime-1408415402>; Kathy Gurchiek, Society for Human Resource Management, *Research: Employers Willing to Overlook a Criminal Record to Hire the Right Person* (May 17, 2018), available at <https://www.shrm.org/ResourcesAndTools/hr-topics/behavioral-competencies/global-and-cultural-effectiveness/Pages/Research-Employers-Willing-to-Overlook-Criminal-Record-to-Hire-Right-Person.aspx>.

⁴⁰ D.C. Official Code § 47–2853.12.

⁴¹ See Society for Human Resource management, *SHRM Survey Findings: Background Checking—The Use of Criminal Background Checks in Hiring Decisions*, 6 (July 19, 2012), available at https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/Documents/2012BackgroundCheck_Criminal_FINAL.pptx.

⁴² See Fair Criminal Record Screening Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-152; D.C. Official Code § 32-1341 *et seq.*).

⁴³ D.C. Official Code § 4–1501.03.

⁴⁴ The Committee is reminded of a conversation with one returning citizen who described his probation officer’s inquiries into how much he was spending on taxi cab fares since his release. The returning citizen replied to his probation officer that he had been incarcerated the entirety of his adult life and had therefore never learned how to ride the Metro system.

iii. *The Excessive Enforcement of Alleged Minor Offenses by MTPD Decreases Trust in Law Enforcement*

Last month, MTPD officers pepper sprayed a group of young African-American students at the NoMa Metro station when the students allegedly fare evaded. Witnesses stated that one student required cardiopulmonary resuscitation.⁴⁵

In May 2018, MTPD officers grabbed a 24-year-old, African-American woman by the arm at the Fort Totten Metro station, falling to the floor in the ensuing struggle.⁴⁶ One officer straddled her on her back, holding a Taser close to his body, while another officer held her to the floor. In the struggle, her top was pulled down, exposing her breasts to a crowd of onlookers. An onlooker spit on one of the officers, while another offered a sweater to the officers to cover the woman. MTPD alleged that the woman had refused commands to stop after evading the fare when exiting the station. The woman was arrested for fare evasion and assault on a police officer.

In February 2018, MTPD officers “slammed a woman to the ground to arrest her for not paying to get on a bus”.⁴⁷ The African-American high school student had allegedly walked onto a bus in Southeast Washington past the fare box without swiping her D.C. One Card and sat down with her two small children, when a plainclothes officer told her to exit the bus. The confrontation escalated, and in pushing her to the ground, officers cut her face, broke four of her teeth, and fractured her knee. She was allegedly arrested for fare evasion and resisting arrest.

In October 2016, a MTPD officer arrested an 18-year-old African-American high school student after she refused to discard a bag of chips and a lollipop.⁴⁸ The “officer [hooked] his arm behind her elbow and kick[ed] backward against her calf, knocking her to the ground as people watching and filming the altercation gasp[ed].” When the young woman steadied herself against the wall, the officer pushed her back down to the ground, yelling at her. Another officer stated to a bystander: “Little girls can break the law! Little girls can get arrested like everybody else! [...] And she goes to juvenile detention and her mom comes and picks her up. That’s how it works!” The young woman was reportedly arrested for unlawful entry.

⁴⁵ Eve Zhurbinskiy, *A new report highlights the stark racial disparities in Metro fare enforcement*, Greater Greater Washington Blog (Sept. 20, 2018), available at <https://ggwash.org/view/69171/a-new-report-highlights-the-stark-racial-disparities-in-metro-fare-enforcem>.

⁴⁶ Faiz Siddiqui, *Fare evasion: Activists cry foul over Metro Transit Police pinning down woman, exposing her breasts*, WASH. POST (May 30, 2018), available at https://www.washingtonpost.com/news/dr-gridlock/wp/2018/05/30/fare-evasion-activists-cry-foul-over-metro-transit-police-pinning-down-woman-exposing-her-breasts/?utm_term=.130c2bf04f0f; WJLA, *VIDEO: Woman held down during arrest at Fort Totten Metro station sparks controversy*, available at <https://wjla.com/news/local/video-woman-held-down-arrested-at-fort-totten-metro-station-sparks-controversy>.

⁴⁷ Michael Quander, *‘Police did this to mommy’: Woman injured during arrest at DC bus stop*, WUSA9 (Feb. 10, 2018), available at <https://www.wusa9.com/article/news/local/dc/police-did-this-to-mommy-woman-injured-during-arrest-at-dc-bus-stop/65-517248377>.

⁴⁸ Martine Powers, *Metro Transit Police arrest teenager for carrying chips and lollipop into station*, WASH. POST (Oct. 19, 2016), available at https://www.washingtonpost.com/local/trafficandcommuting/metro-transit-police-arrest-teenager-for-carrying-chips-and-lollipop-into-station/2016/10/19/1360a014-9627-11e6-bb29-bf2701dbe0a3_story.html?utm_term=.0ad4d0288123.

And famously, in 2000, a 12-year-old girl was arrested for eating a single French fry at the Tenleytown Metro station.⁴⁹ “Her shoelaces were removed, and she was transported in the windowless rear compartment of a police vehicle to a juvenile processing center, where she was booked, fingerprinted and detained until released to the custody of her mother, some three hours later -- all for eating a single french fry in a Metrorail station.”⁵⁰

The young people arrested in these incidents will likely forever have a changed perception of law enforcement because of the MTPD officers’ unnecessary conduct. As Nassim Moshiree, Policy Director of the American Civil Liberties Union of the District of Columbia, stated in her testimony at the Committee’s hearing on the bill: “Making fare evasion a civil, rather than criminal offense can help decrease occasions for confrontations between Metro officers and riders, and avoid escalation of situations that can be much more reasonably and effectively resolved with a civil fine.”⁵¹

iv. *There is No Evidence that the Criminalization of Fare Evasion Deters Further Fare Evasion or Reduces Assaults on Transit Personnel*

[R]iding the bus twice per day, five days per week, fifty weeks per year to commute to and from work comes out to \$1,000. Though \$1,000 is a lot for anyone to bear, it is a significantly larger burden in DC’s poorer neighborhoods, where the median household income of \$22,598 is just a sixth of what the wealthiest neighborhoods earn. These are also the neighborhoods that are farthest away from the city’s center, making the metro an integral transportation option. Commuting from Benning Road, where the median income is \$30,900, to Metro Center at rush hour is \$6.20 per day whereas commuting from Dupont, median income of \$118,327, is \$4.50 per day. Low-income communities are, in other words, being taxed for not being able to afford living closer to the center of the city. Being poor is already disproportionately expensive; public transportation, a system designed to increase access and affordability, should not increase the financial burden for its poorest residents.⁵²

“Deterrence theory”, a foundational principle in the American criminal justice system, posits that the threat of punishment has a deterrent effect on criminal behavior.⁵³ This principle, of course, assumes that individuals are rational actors, fully able to appreciate the criminal statutes governing their conduct prior to and during the commission of an offense. However, research has found that it is the *certainty*, and not the *severity*, of punishment, that has a deterrent effect on

⁴⁹ Petula Dvorak, *UPDATE: Girl Whose French-Fry Arrest Led to Metro Policy Change Sets Sights on College, Career*, WASH. POST (Jan. 8, 2006), available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/01/07/AR2006010701003.html>.

⁵⁰ *Hedgepeth v. Wash. Metro. Area. Transit Auth.*, 386 F.3d 1148, 1150 (D.C. Cir., 2004).

⁵¹ D.C. Council Committee on the Judiciary and Public Safety, *Public Hearing on B22-0408, the “Fare Evasion Decriminalization Act of 2017”* 4 (oral testimony of Nassim Moshiree, Policy Director, ACLU of the District of Columbia (Oct. 19, 2017), available at <http://lims.dccouncil.us/Download/38590/B22-0408-HearingRecord1.pdf>.

⁵² See, Lara Fishbane, *Fare Evasion: Access in an Unequal System*, Blog of the Beeck Center for Social Impact and Innovation at Georgetown University (Aug. 14, 2017), available at <http://beeckcenter.georgetown.edu/fare-evasion/>.

⁵³ National Institute of Justice, *Five Things about Deterrence* (May 2016), available at <https://www.ncjrs.gov/pdffiles1/nij/247350.pdf>.

crime,⁵⁴ and that increased contact with the criminal justice system can actually exacerbate recidivism.⁵⁵

In the context of fare evasion, there is no evidence that its criminalization, rather than civil enforcement, is a deterrent by itself. If, as WMATA argues, criminal enforcement is necessary to deter fare evasion, why, then, is enforcement continuing to increase? It would seem that the need for enforcement should decrease over time as fare evasion decreases. If fare evasion is actually spurred by economics or other factors, such as a lack of Kids Ride Free SmarTrip cards, it would stand to reason that fare evasion would increase or decrease as those factors change.

WMATA also relies heavily on the argument that fare evaders commit other, more serious crimes on Metro, such as assaults on transit operators. This may be true, but there is no evidence that most or all fare evaders do so or that the relationship is causal. For example, it may be that individuals who commit homicides almost always have had prior involvement with the criminal justice system, but not all individuals with prior involvement with the criminal justice system commit homicides, and low-level offenses are not necessarily “gateway crimes” to homicide. WMATA’s argument seems to be that assaults committed on transit operators are almost always committed by individuals who fare evade, and therefore fare evasion enforcement will prevent assaults, but they do not provide any evidence that this is causal. Take any neighborhood in the District: if police searched everyone in that neighborhood, they would likely find people with illegal weapons or outstanding warrants. That does not mean that such a search – or in this case, aggressive and widespread fare evasion enforcement – *should* be conducted, or that living in a particular neighborhood *causes* individuals to carry illegal weapons.

The Committee takes assaults on transit operators very seriously, but they are continuing to occur regardless of increased fare evasion enforcement; even as system-wide crime is significantly down and fare evasion enforcement is up exponentially, assaults on bus drivers are also up twenty percent. Further, there are already strong laws in place for assaults on transit workers, including enhanced criminal penalties.⁵⁶ WMATA would be better served to identify factors that cause individuals to assault transit operators – not conditions sometimes present when assaults are committed – and then work to reduce those causal factors.

v. *Other Jurisdictions Are Rapidly Decriminalizing Fare Evasion*

A number of jurisdictions already have or are considering decriminalizing fare evasion, primarily for racial and economic equity reasons. In 2008, San Francisco decriminalized all fare

⁵⁴ *Id.* “The police deter crime when they do things that strengthen a criminal’s perception of the certainty of being caught. Strategies that use the police as ‘sentinels’, such as hot spots policing, are particularly effective. A criminal’s behavior is more likely to be influenced by seeing a police officer with handcuffs and a radio than by a new law increasing penalties.”

⁵⁵ *Id.*; see also, Valerie Wright, *Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment* (2010), available at <https://www.sentencingproject.org/wp-content/uploads/2016/01/Deterrence-in-Criminal-Justice.pdf>.

⁵⁶ See, D.C. Official Code § 35-261.

evasion offenses for adults, and did the same for minors in 2016.⁵⁷ In 2015, King County, Washington, decriminalized fare evasion for minors out of concern for the proliferation of criminal records,⁵⁸ and California followed suit in 2016.⁵⁹ Last year, prosecutors in Oregon stated they would stop pursuing charges against most riders on Portland's Metro system in the wake of a Portland State University study⁶⁰ concluding black riders were much more likely to be barred from the system for repeat violations.⁶¹ New York state is currently considering decriminalization following reporting in New York City that arrests occur more frequently at stations serving low-income neighborhoods.⁶² In 2017, the Manhattan District Attorney recently announced that its office would no longer prosecute most fare evasion arrests.⁶³ In decriminalizing fare evasion, several of these jurisdictions have been motivated by the research on the failures of "broken windows policing", which the Committee recommends WMATA also examine.

vi. *Alternatives to Criminalization Are Better Uses of District and WMATA Funds*

Public witnesses at the Committee's hearing on B22-0408 suggested numerous alternate methods of reducing fare evasion, and the Committee has also surveyed strategies of other transit systems. These methods and strategies include:

- Redesigning station entrances to move away from pie-wedge gates and instead erecting barrier-style gates;⁶⁴
- Improving control of accessible swing gates and adding alarms;⁶⁵
- Hiring civilian fare inspectors;

⁵⁷ Joe Fitzgerald Rodriguez, *Muni drops criminal fines for youth who evade fares, fail to give up elderly/disabled seat*, S.F. EXAMINER (Feb. 16, 2016), available at <http://www.sfexaminer.com/criminal-fines-dropped-for-youth-who-evade-fares-fail-to-give-up-elderlydisabled-seat-on-muni/>.

⁵⁸ King County Council, *Council votes to make major changes to Metro's fare enforcement policy* (Oct. 26, 2015), available at <https://www.kingcounty.gov/council/news/2015/October/10-26-DU-fareenforcement.aspx>.

⁵⁹ Bob Egelko, *Fare Evasion to no longer be a crime for minors in California*, S.F. GATE (Aug. 22, 2016), available at <https://www.sfgate.com/news/article/Fare-evasion-to-no-longer-be-a-crime-for-minors-9178363.php>.

⁶⁰ See Brian C. Renauer, *Analysis of Racial/Ethnic Disparity in TriMet Fare Enforcement Outcomes on the MAX 2016-2018*, Criminal Justice Policy Research Institute (Aug. 2018), available at <http://news.trimet.org/wordpress/wp-content/uploads/2018/08/PSU-Analysis-of-Racial-Ethnic-Disparity-in-TriMet-Fare-Enforcement-on-MAX-2016-2018.pdf>.

⁶¹ Aimee Green, *Prosecutors will stop pursuing charges against most TriMet fare evaders*, THE OREGONIAN (Jan. 6, 2017), available at https://www.oregonlive.com/portland/index.ssf/2017/01/prosecutors_will_stop_pursuing.html.

⁶² Harold Stolper and Jeff Jones, *The Crime of Being Short \$2.75: Policing Communities of Color at the Turnstile*, Community Service Society (Oct. 2017), available at

http://lghhttp.58547.nexcesscdn.net/803F44A/images/nycss/images/uploads/pubs/Fare_Evasion_FINAL_10_6_17_smaller.pdf. The New York Police Department arrested 4,600 people in the first three months of 2017, 90 percent of whom were black and Hispanic. As in D.C., young black men represented almost half of all fare evasion arrests.

⁶³ Brendan Cheney, *Manhattan DA will no longer prosecute turnstile jumping*, POLITICO (Feb. 1, 2018), available at <https://www.politico.com/states/new-york/city-hall/story/2018/02/01/manhattan-da-will-no-longer-prosecute-turnstile-jumping-229568>.

⁶⁴ WMATA's "Fair Share" Initiative – launched in May 2017 through a pilot at the Fort Totten and Gallery Place Metro stations – includes plans to raise fare barriers to 4.5 feet at above ground stations.

⁶⁵ The Fair Share Initiative also contemplates securing swing gates throughout the system in five phases. Preliminary results showed a 90% reduction in fare evasion at Fort Totten. Securing the gates costs approximately \$65,000 per station, much lower than the alleged \$25 million lost to WMATA each year from fare evasion. See, <https://www.wmata.com/about/board/meetings/board-pdfs/upload/3A-Fair-Share-Update.pdf>.

- Increasing educational campaigns about the effect of fare evasion of the system, including system-wide loudspeaker announcements and advertisements on trains and buses;
- Enhancing community engagement around WMATA's "Respect Your Ride" public awareness campaign;
- Creating a low-income riders' advisory group to examine transit affordability;
- Training for Metro personnel in de-escalation tactics, cultural competency, implicit bias, and interacting with young riders;
- Stocking enough Kids Ride Free SmarTrip cards for District students, together with educational messaging about the effects on the system of failing to tap the cards;⁶⁶
- Implementing a check-and-request policy;
- Exploring all-door boarding on buses;
- Making physical improvements to Metro trains and buses, including air conditioning and enhanced lighting; and
- Providing subsidies for low-income riders.⁶⁷

The Committee encourages WMATA to consider these alternative methods as more effective and equitable tools for reducing fare evasion. Decriminalization will not only save WMATA time and money, but it will also reduce the Superior Court's caseload and better utilize the funds of the Office of the Attorney General, the entity responsible for prosecution.

vii. Conclusion

Civil enforcement is an alternative to criminalization that is widely employed in the District, with the prime example being parking tickets. The Committee recognizes that the most common criminal encounters in the United States are for misdemeanors, not felonies. In her book *Misdemeanorland*, Yale law and sociology professor Issa Kohler-Hausmann details the individual and societal costs of the churn of misdemeanor arrests and convictions, as characterized by the *New York Times*: "vast numbers of browbeaten people who are degraded by arrest, demeaned by a bureaucratic court system, and permanently stamped with criminal records."⁶⁸ WMATA's insistence on law enforcement-based solutions to economic conditions is not in keeping with

⁶⁶ A September 27, 2018, report from WAMU stated that three days prior to the deadline for students to begin using their Kids Ride Free SmarTrip cards, District officials had underestimated the number of necessary cards to order. One school, despite having made repeated requests to the District government, was still 400 cards short. This gap will inevitably result in increased fare evasion, as some parents cannot afford to send their children to school without subsidization. The Committee encourages the Office of the City Administrator to rapidly contact schools with outstanding needs and work with WMATA to delay fare evasion citations for juveniles until the issue is resolved. Going forward, the District should distribute cards at additional locations and times more accessible to parents during the summer months. See, Jenny Abamu, *D.C. Schools Don't Have Enough Transit Cards For Kids. The City Says It's Not a Shortage*, WAMU (Sep. 27, 2018), available at <https://wamu.org/story/18/09/27/d-c-schools-dont-enough-transit-cards-kids-city-says-not-shortage/>.

⁶⁷ Seattle's ORCA LIFT Reduced Fare Program provides reduced-fare cards to individuals with household incomes of less than double the federal poverty level. See, <https://www.soundtransit.org/orca-lift-reduced-fare-program>. New York City has also recently agreed to include \$106 million in the city's budget for "Fair Fares", a program to provide half-price transit fares for approximately one in ten New Yorkers.

⁶⁸ Sam Roberts, *The "Social Control" Elements of New York's Criminal Justice System*, N.Y. TIMES (July 26, 2018), available at <https://www.nytimes.com/2018/07/26/nyregion/social-control-elements-of-new-yorks-criminal-justice-system.html>. See Issa Kohler-Hausmann, *Misdemeanorland: Criminal Courts and Social Control in an Age of Broken Windows Policing* (2018).

national or local trends, and most important, is ineffectual. The Committee Print therefore decriminalizes the following conduct:

- (1) Smoke or carry a lighted or smoldering pipe, cigar, or cigarette;
- (2) Consume food or beverages;
- (3) Spit;
- (4) Discard litter;
- (5) Play any radio, musical instrument, or similar device, unless it is connected to an earphone that limits the sound to the individual user;
- (6) Carry any animals, except for guide dogs properly harnessed and small animals properly contained;
- (7) Stand in front of the line marked on the forward end of the floor of any bus or otherwise conduct themselves in such a manner as to obstruct the vision of the operator;
- (8) Operate or chain to any fence, tree, railing, or other structure not specifically designated for such use, skateboards, rollerblades, roller skates, non-motorized scooters, bicycles, tricycles, or unicycles; or
- (9) Park, operate, carry, wheel, or chain to any fence, tree, railing, or other structure not specifically designated for such use, mopeds, motorbikes, or any similar vehicle.

Such conduct will be subject to a maximum \$50 civil fine.

LEGISLATIVE HISTORY

July 11, 2017	B22-0408 is introduced by Councilmembers Trayon White, Bonds, Cheh, Grosso, McDuffie, Nadeau, Silverman, and Robert White at the Committee of the Whole.
July 11, 2017	B22-0408 is referred to the Committee on the Judiciary and Public Safety with comments from the Committee on Transportation and the Environment and the Committee on Finance and Revenue.
July 21, 2017	Notice of Intent to Act on B22-0408 is published in the <i>District of Columbia Register</i> .
September 29, 2017	Notice of Public Hearing on B22-0408 is published in the <i>District of Columbia Register</i> .
October 19, 2017	Public Hearing on B22-0408 is held by the Committee on the Judiciary and Public Safety.
October 4, 2018	Consideration and vote on B22-0408 by the Committee on the Judiciary and Public Safety.

POSITION OF THE EXECUTIVE

Staff from the Office of the Deputy Mayor for Public Safety and Justice testified on behalf of the Executive at the Committee's October 19, 2017, public hearing.

Helder Gil – Chief of Staff, Office of the Deputy Mayor for Public Safety and Justice

Mr. Gil did not take a position on the bill on behalf of the Executive. He noted that the bill, as introduced, did not provide an avenue for enforcement or appeal of the civil fine. He also described the Kids Ride Free program, administered by the Office of the State Superintendent of Education, which allows District public and public charter school students up to age twenty-one to ride WMATA and the Circulator for free if they are enrolled in an elementary or secondary school in the District. He noted other District agencies' various transit subsidies and incentives. He expressed the Executive's concerns that decriminalization could adversely impact Metro transit operators and personnel by unintentionally increasing the number of fare evasions by individuals who believe that there is not a penalty for fare evasion. Mr. Gil testified that the District must send a clear message that assaulting WMATA personnel will not be tolerated, and he expressed the Executive's support for increased penalties for assaults on transit operators, which were not included in B22-0408.

ADVISORY NEIGHBORHOOD COMMISSION COMMENTS

The Committee did not receive comments from Advisory Neighborhood Commissions.

WITNESS LIST AND HEARING RECORD

The Committee on the Judiciary and Public Safety held a hearing on B22-0408, the "Fare Evasion Decriminalization Act of 2018", on October 19, 2017. A video recording of the hearing can be viewed at <https://entertainment.dc.gov/page/demand-2017>. The following witnesses testified before the Committee or submitted written testimony:

Public Witnesses

Nassim Moshiree – Policy Director, ACLU of the District of Columbia

Ms. Moshiree testified in support of the bill, stating that the bill represents a smart, sensible, and necessary reform of transit policy. She argued that criminalization of fare evasion is significantly linked to criminalization of poverty. Fares have continued to rise in the District in the past few years, along with economic inequity and lack of access to public transportation. She stated that those who have been arrested for fare evasion are caught in a cycle of fines and court obligations that leave them in an even worse situation financially and which could lead to disproportionately high rates of incarceration. Ms. Moshiree testified that enforcement of fare evasion is racialized in the District and across the country, as has been demonstrated in research conducted in Ohio, Minnesota, Oregon, and New York. She then spoke to the collateral consequences of arrests, particularly for young people and immigrants. She stated that MTPD's increased fare evasion enforcement embodies a failed "broken windows" approach to policing that

can lead to unnecessary confrontations and erode trust in law enforcement. Lastly, she noted the costs on WMATA for fare evasion enforcement, particularly in comparison to the benefits, as well as costs on the District's criminal justice agencies and on individuals with criminal records. She stated that, "Criminalizing riders will not result in an equitable transit system. Far from it: it leads to harmful collateral consequences for D.C. residents who already face significant economic barriers and disparate treatment in accessing resources."

Greg Montross – Representative, Showing up for Racial Justice ("SURJ")

Mr. Montross testified in support of the bill. He argued that WMATA's goals in increasing fare evasion – safety for personnel, revenue collection, and its zero-tolerance approach to theft of fares – would not be affected by decriminalization, mainly because the *certainty* of being caught is a more effective deterrent than the *severity* of punishment, which civil enforcement can provide. Mr. Montross noted that as fare evasion enforcement more than doubled in 2017, assaults on bus operators also increased by twenty percent. He suggested alternatives to criminalization intended to reduce assaults on transit personnel, including installing barriers, training personnel on de-escalation tactics, implementing a check-and-request policy, programming automated responses in the system, increasing signage and public education campaigns, and physical improvements to transit vehicles such as air conditioning.

Claudia Barragan – Public Witness

Ms. Barragan testified in support of the bill, arguing that the criminalization of fare evasion disproportionately affects communities of color and immigrants. She spoke to the difficulties encountered by non-English language speakers in understanding WMATA and District public school policies relating to fares. She called for MTPD to provide demographic data associated with fare evasion.

Rachel Smith – Public Witness

Ms. Smith testified in support of the bill. She spoke to her personal experience working with individuals with criminal records and the collateral consequences they experience. She argued that the punishment for the offense should fit the wrong. She expressed her concerns with the costs associated with fare evasion enforcement, including on WMATA and the District's criminal justice agencies. She stated that she thinks decriminalization represents justice.

Ryan Zalaskus – Public Witness

Mr. Zalaskus submitted testimony to the Committee in opposition to the bill. He wrote that decriminalization "sends the wrong message" to fare evaders by sanctioning theft. He added that, "We need our citizens, especially young people, to know there are consequences to breaking the law if we are to have a law-abiding city." He recommended that the Council instead fund programs to subsidize fares for individuals who cannot afford them.

Government Witnesses

Ronald Pavlik – Chief, Metro Transit Police, WMATA

Chief Pavlik testified in opposition to the bill. He provided an overview of MTPD's fare enforcement policy, which begins with a stop, identification check, background check, and issuance of a failure to pay citation. He stated that more than ninety percent of fare evasion arrests end in the issuance of a citation, and juveniles only receive a warning. MTPD's fine for the offense is "usually" \$50, which goes into the District's General Fund. In the five days before the hearing, MTPD had arrested eleven individuals with open warrants and confiscated two unlawful weapons. In 2017, leading up to the hearing, more than 400 individuals with outstanding warrants had been stopped through fare evasion, and WMATA had experienced a twenty percent decrease in violent crime.

Robert Potts – Assistant General Manager, Bus Services, WMATA

Mr. Potts testified that WMATA's focus on increased fare evasion enforcement was largely motivated by the need to protect bus operators and station managers, stating that most assaults result from fare disputes (two-thirds of all bus operator assaults). He testified that WMATA has equipped more than one-third of its bus fleet with protective shields, installed nine to ten security cameras on every bus, trained operators on conflict avoidance, deployed additional police patrols, and programmed automated fare announcements when passengers enter the bus.

Katya Semyonova – Special Counsel to the Director for Policy, Public Defender Service for the District of Columbia

Ms. Semyonova testified in support of the bill. She noted the negative consequences associated with an arrest for fare evasion, including time waiting for arraignment and employment consequences. She also highlighted the challenges posed by an arrest for fare evasion for individuals on supervised release or parole. Ms. Semyonova spoke to the lengthy wait to seal such a misdemeanor record. She stated that there is no evidence that the criminalization of fare evasion deters such conduct, or that the costs associated with its enforcement (especially when most cases are no-papered) justify its enforcement. Lastly, she noted that the Council should also amend the District's second-degree theft statute to provide that fare evasion is not included in that offense.

Richard Schmechel – Executive Director, Criminal Code Reform Commission

Mr. Schmechel did not take a position on the bill. He echoed Ms. Semyonova's comments regarding the need to amend the second-degree theft statute (and potentially the offense of unlawful entry of a motor vehicle) in order to effectively decriminalize such conduct.

IMPACT ON EXISTING LAW

B22-0408 amends the Omnibus Public Safety and Justice Amendment Act of 2009 to provide that fare evasion does not constitute unlawful entry of a motor vehicle; amends the District of Columbia Theft and White Collar Crimes Act of 1982 to provide that fare evasion does not

constitute theft; and amends the Act to Regulate Public Conduct on Public Passenger Vehicles to clarify unlawful conduct on passenger vehicles, and to decriminalize and modify the penalties for fare evasion and other unlawful conduct on passenger vehicles.

FISCAL IMPACT

The Committee adopts the fiscal impact statement of the District's Chief Financial Officer.

SECTION-BY-SECTION ANALYSIS

- Section 1** Provides the long and short titles of the legislation.
- Section 2** Amends the Omnibus Public Safety and Justice Amendment Act of 2009, effective December 10, 2009 (D.C. Law 18-88; D.C. Official Code § 22-1341), to provide that fare evasion does not constitute unlawful entry of a motor vehicle.
- Section 3** Amends the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3211), to provide that fare evasion does not constitute theft.
- Section 4** (a) Amends section 2 of the Act to Regulate Public Conduct on Public Passenger Vehicles, effective September 23, 1975 (D.C. Law 1-18; codified in scattered cites of the D.C. Official Code), to make clarifying changes to the list of unlawful conduct on public passenger vehicles.
- (b) Amends section 3 to make clarifying changes.
- (c) Amends section 5 to decriminalize fare evasion and most unlawful conduct on public passenger vehicles to make them subject to a maximum \$50 civil fine.
- Section 5** Contains the fiscal impact statement.
- Section 6** Contains the effective date.

COMMITTEE ACTION

On October 4, 2018, the Committee on the Judiciary and Public Safety held a markup to consider B22-0408, the "Fare Evasion Decriminalization Amendment Act of 2018". The meeting was called to order at 3:10 p.m. Chairperson Charles Allen recognized a quorum consisting of himself and Councilmembers Anita Bonds, Mary M. Cheh, Vincent Gray, and David Grosso.

Chairperson Allen first described the bill's provisions and the Committee's reasoning. Councilmember Cheh stated that, based on her conversations with Councilmember Evans, WMATA does not arrest only for the offense of fare evasion, and that if one is cited for fare

evasion, there is only a criminal consequence if one does not pay the fine. She conveyed Mr. Evans' sentiment that criminalizing the conduct is necessary for enforcement. She suggested that Chairperson Allen amend the bill to remove the ability of MTPD to arrest but keep the criminal fine. Chairperson Allen responded that decriminalization was the method he would pursue, stating that the Committee Print preserves the ability of MTPD to stop individuals and cite them as they currently do. He continued that it is the initial criminal police interaction which escalates, and he provided examples of egregious interactions by MTPD against individuals who have allegedly fare evaded. Chairperson Allen compared fare evasion to citations for parking violations, arguing that everyone must pay the meter and also their fare, and now the consequences would be the same between the two types of unwanted conduct. Chairperson Allen concluded by noting the collateral consequences of criminalizing minor conduct, reflecting upon the Committee Members' commitment to reducing such barriers through record sealing and expungement. Councilmember Cheh reiterated that it was her impression that WMATA did not arrest individuals only for fare evasion, and in response, Chairperson Allen provided data from the Office of the Attorney General (Table 3 in this Report) on papered fare evasion cases.

Councilmember Bonds then expressed her support for the bill, also suggesting that the Committee should examine MTPD's escalation against riders' conduct more broadly. Councilmember Gray thanked Chairperson Allen for moving the bill out of Committee, noting the troubling statistics of racial enforcement by MTPD cited in the Committee Report. He argued that individuals should not be involved in the criminal justice system just because of fare evasion and other "minor situations". Councilmember Grosso similarly expressed his support for the bill and thanked Councilmember Trayon White, the bill's introducer. He said that the bill was part of the import efforts to dismantle the system of mass incarceration. Arrest, Mr. Grosso stated, is a disproportionate response to this conduct, and he argued that such arrests contribute to the school-to-prison pipeline. He concluded by recommending that MTPD reevaluate its responses to minor conduct on the Metro system.

Chairperson Allen, without objection, moved the Committee Report and Print for B22-0408 en bloc with leave for staff to make technical and conforming changes. The Committee then voted 5-0 to approve the Committee Report and Print with the Members voting as follows:

YES: Chairperson Allen and Councilmembers Bonds, Cheh, Gray, and Grosso

NO: None

PRESENT: None

ABSENT: None

LIST OF ATTACHMENTS


- (A) B22-0408, as introduced
- (B) Notice of Public Hearing, as published in the *District of Columbia Register*
- (C) Agenda and Witness List
- (D) Witness Testimony

- (E) Fiscal Impact Statement
- (F) Legal Sufficiency Determination
- (G) Comparative Print of B22-0408
- (H) Committee Print of B22-0408

ATTACHMENT A

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council

From : Nyasha Smith, Secretary to the Council
Date : July 12, 2017
Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Committee of the Whole on Tuesday, July 11, 2017. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Fare Evasion Decriminalization Act of 2017", B22-0408

INTRODUCED BY: Councilmembers T. White, Cheh, Silverman, Bonds, R. White, Nadeau, Grosso, and McDuffie

CO-SPONSORED BY: Councilmember Gray

The Chairman is referring this legislation to the Committee on Judiciary and Public Safety with comments from the Committee on Transportation and the Environment and the Committee on Finance and Revenue.

Attachment

cc: General Counsel
Budget Director
Legislative Services

1
2 Councilmember Robert C. White, Jr.
3

4
5 Councilmember Brianne Nadeau
6
7 Councilmember Brianne Nadeau
8

9
10 Councilmember David Grosso
11
12 Councilmember David Grosso
13

14
15 Councilmember Kenyan McDuffie
16
17

Councilmember Trayon White
18

Councilmember Mary Cheh
19

Councilmember Elissa Silverman
20

Councilmember Anita Bonds
21

22
23 A BILL
24
25

26
27 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
28

29 To amend the Act to Regulate Public Conduct on Public Passenger Vehicles to make fare
30 evasion a civil offense punishable by fine instead of a criminal offense that can be
31 punishable via imprisonment.
32

33 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
34 act may be cited as the "Fare Evasion Decriminalization Act of 2017".

35 Section 5 of the Act to Regulate Public Conduct on Public Passenger Vehicles,
36 effective September 23, 1975 (D.C. Law 1-18; D.C. Official Code § 35-253), is amended as
37 follows:

38 (a) Strike the phrase "A violation of § 35-216 shall be punishable by a fine of not more
39 than \$300, by imprisonment for not more than 10 days, or both." and inserting the
40 phrase "A violation of § 35-216 shall be a civil offense punishable by a fine of not
41 more than \$100." in its place.

(b) Strike the phrase "All prosecutions under this act" and insert the phrase "All prosecutions under sections 2, 4, and 5 of this act" in its place.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

ATTACHMENT B

**Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

ANNOUNCES A PUBLIC HEARING ON

BILL 22-0408, THE “FARE EVASION DECRIMINALIZATION ACT OF 2017”

AND

BILL 22-0452, THE “CLEMENCY BOARD ESTABLISHMENT ACT OF 2017”

**Thursday, October 19, 2017, 12:00 p.m.
Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

On Thursday, October 19, 2017, Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, will hold a public hearing on Bill 22-0408, the “Fare Evasion Decriminalization Act of 2017”, and Bill 22-0452, the “Clemency Board Establishment Act of 2017”. The hearing will take place in Room 123 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 12:00 p.m.

The stated purpose of Bill 22-0408, the “Fare Evasion Decriminalization Act of 2017”, is to amend the Act to Regulate Public Conduct on Public Passenger Vehicles to make fare evasion a civil offense punishable by fine instead of a criminal offense that can be punishable via imprisonment.

The stated purpose of Bill 22-0452, the “Clemency Board Establishment Act of 2017”, is to establish a Clemency Board to advance local control over the clemency process by reviewing applications for pardons and commutations for District of Columbia Code offenders.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact the Committee via email at judiciary@dccouncil.us or at (202) 727-8275, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Friday, October 13**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses are encouraged to bring **twenty single-sided copies** of their written testimony

and, if possible, also submit a copy of their testimony electronically in advance to judiciary@dccouncil.us.

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee at judiciary@dccouncil.us or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. **The record will close at the end of the business day on November 2.**

ATTACHMENT C

**Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
AGENDA & WITNESS LIST
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

ANNOUNCES A PUBLIC HEARING ON

BILL 22-0408, THE “FARE EVASION DECRIMINALIZATION ACT OF 2017”

AND

BILL 22-0452, THE “CLEMENCY BOARD ESTABLISHMENT ACT OF 2017”

**Thursday, October 19, 2017, 12:00 p.m.
Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

AGENDA

- I. CALL TO ORDER**
- II. OPENING REMARKS**
- III. WITNESS TESTIMONY**

B22-0408, the “Fare Evasion Decriminalization Act of 2017”

- i. Public Witnesses**
 - 1. Nassim Moshiree, Policy Director, ACLU of the District of Columbia**
 - 2. Greg Montross, Representative, Showing up for Racial Justice (SURJ)**
 - 3. Claudia Barragan, Representative, Many Languages One Voice (MLOV)**
 - 4. Rachel Smith, Public Witness**
 - 5. Michael Sindram, Public Witness**

ii. Government Witnesses

1. Ronald Pavlik, Chief, Metro Transit Police, WMATA
2. Robert Potts, Assistant General Manager, Bus Services, WMATA
3. Helder Gil, Chief of Staff, Office of the Deputy Mayor for Public Safety and Justice
4. Katya Semyonova, Special Counsel to the Director for Policy, Public Defender Service for the District of Columbia

B22-0452, the “Clemency Board Establishment Act of 2017”

i. Public Witnesses

1. Irvin Nathan, Council for Court Excellence
2. Cynthia Roseberry, Executive Director, Council for Court Excellence
3. Emily Tatro, Senior Policy Counsel, Council for Court Excellence
4. Hon. Mary Ellen Abrecht, Public Witness
5. Jessica Steinberg, Associate Professor of Clinical Law/Director, Prisoner & Reentry Clinic, George Washington University Law School
6. Nassim Moshiree, Policy Director, ACLU of the District of Columbia
7. Malcolm Young, Project Director, Project New Opportunity
8. Norman Brown, Deputy Project Director, Project New Opportunity
9. Philip Fornaci, Director, DC Prisoners' Project, Washington Lawyers' Committee for Civil Rights and Urban Affairs
10. Sidney Davis, CEO, Solutions VII, Inc.
11. Danielle Cartwright, Public Witness
12. Charceil Kellam, Public Witness
13. Rudolph Norris, Public Witness
14. Beatrice Saunders-Shield, Public Witness
15. Michael Sindram, Public Witness

ii. Government Witnesses

1. Helder Gil, Chief of Staff, Office of the Deputy Mayor for Public Safety and Justice
2. Katya Semyonova, Special Counsel to the Director for Policy, Public Defender Service for the District of Columbia

IV. ADJOURNMENT

ATTACHMENT D

Statement on behalf of the
American Civil Liberties Union of the District of Columbia
before the
DC Council Committee on Judiciary and Public Safety
Public Hearing on Bill 22-408, the "Fare Evasion Decriminalization Act of 2017" and
Bill 22-452, the "Clemency Board Establishment Act of 2017"
Thursday, October 19, 2017
by
Nassim Moshiree, Policy Director

Good afternoon, Councilmember Allen and members of the Committee. My name is Nassim Moshiree and I am the Policy Director of the American Civil Liberties Union of the District of Columbia (ACLU-DC). I present the following testimony on behalf of our more than 20,000 members in the District of Columbia.

The ACLU-DC is committed to working to reverse the tide of over-incarceration, safeguard fundamental liberties, eliminate racial disparities, and advocate for sensible, evidence-based reforms of criminal justice policies. Today, I am testifying in support of Bill 22-408 the "Fare Evasion Decriminalization Act of 2017," and Bill 22-452, the "Clemency Board Establishment Act of 2017."

Bill 22-408 "Fare Evasion Decriminalization Act of 2017"

Bill 22-408 amends the "Act to Regulate Public Conduct on Public Passenger Vehicles" in the DC Code to make violations of fare evasion a civil offense punishable by a fine of not more than \$100. In doing so, the bill removes criminal penalties for fare evasion that currently subject violators to fines of up to \$300, arrest, and imprisonment for up to 10 days. The ACLU-DC strongly supports Bill 22-408 as a smart, sensible, and necessary reform of transit fare and enforcement policies.

Recently, the DC Council introduced a resolution seeking to advance fundamental practices for equity and social justice in District-wide decision-making efforts by recognizing that this inequity exists with regards to race, economic class, and gender and by encouraging District leaders to take proactive steps to address this inequity.¹ We believe that the proposed legislation is in line with the goals of that resolution, and we support it for the following reasons:

I. Criminalization of fare evasion is significantly linked to criminalization of poverty.

Over the past several years, with declining ridership and significant service issues², fares for both Metro-rail and Metro-buses have continued to rise. Meanwhile, homelessness and income inequality have also continued to rise in the District and the continuing

¹ Sense of the Council on Establishing Race, Equity, and Social Justice Resolution of 2017
<http://lims.dccouncil.us/Download/38922/PR22-0524-Introduction.pdf>

² <https://www.citylab.com/transportation/2016/12/wmata-dc-metro-service-cuts-maintenance-hours/511112/>

erosion of affordable housing has pushed many longtime residents further away from the center of commerce and services, increasing their travel costs and time.³

Many low-income DC residents who rely on transit as their primary source of transportation have been priced out of rail, and are being priced out of buses as well. Forced to rely on public transportation, they are the hardest hit by fare increases and often cannot afford the cost of traveling to a job, to the doctor, or to education programs.

Poor people, especially poor people of color, face far greater risks of being fined, arrested, and jailed for violations of minor offenses like fare evasion. And those who have been prosecuted for fare evasion repeatedly are caught in a cycle of fines and court obligations that leave them in an even worse situation financially, are difficult to overcome, and which can lead to disproportionately high rates of incarceration.

II. Enforcement of fare evasion laws disproportionately impact communities of color and immigrant communities.

We know there are significant racial disparities in who is targeted for enforcement of fare evasion laws. It is no secret that black and brown communities are stopped at greater numbers and face disproportionate interactions with law enforcement and the justice system. Evidence of racist enforcement of fare evasion specifically can be found from several other jurisdictions around the country.

- A 2010 study by the ACLU of Ohio analyzing data from the Cleveland transit system on which riders were subject to random searches for fare evasion, found that nine out of ten riders who were given citations were Black.⁴
- A 2015 study by Minnesota's Metro Transit agency measured racial disparities in enforcement of its fare evasion laws and found that people of color (Black and American Indian residents) were far more likely to be arrested or receive citations, as opposed to just warnings, for fare evasion than their White counterparts.⁵
- A 2016 study conducted by Portland State University's Criminal Justice Policy Research Institute at the behest of the Tri-Met transit system, revealed that Black riders were penalized far more often than White riders.⁶

³ <https://www.dcfpi.org/all/dc-ensure-residents-color-can-access-growing-prosperity-census-data-show/>

⁴ <https://www.clevescene.com/cleveland/transit-police-say-rtas-unofficial-fare-enforcement-policies-are-inequitable-and-dangerous/Content?oid=10105428>

⁵ <http://www.startribune.com/study-native-americans-and-blacks-more-likely-to-be-cited-by-metro-transit-police-for-fare-evasion/362846081/> "Data collected from January 2014 through August involving 7,136 arrests and citations indicate that American Indians are 152 percent more likely and black adults are 26 percent more likely to be cited for first-time fare evasion than their white counterparts. Indians are 93 percent more likely to be arrested rather than warned for all incidents than white adults. And black adults were 38 percent more likely to be arrested."

⁶ http://www.oregonlive.com/portland/index.ssf/2017/01/prosecutors_will_stop_pursuing.html

- On October 16, 2017, the Community Service Society (CSS) in New York published a study that found that, even when accounting for poverty and crime, poor Black communities have significantly higher arrest rates for fare evasion than White communities.⁷

But we don't need to look elsewhere to find that both explicit and implicit bias play a role in policing and enforcement of our criminal laws. On any given day, 20,000 DC residents are involved in some way in the DC justice system, and the racial disparity in who is represented in the system is significant.⁸

A large portion of arrests annually in the District are for non-violent low-level offenses like fare evasion, and while these arrests may not directly lead to incarceration, they do saddle primarily Black and Brown DC residents with criminal records.⁹ According to WMATA blotter reports, the vast majority of arrests for fare evasion (81% of arrests for the period between September 2016 and July 2017) take place in the District¹⁰. The collateral consequences of these arrests, especially for young people of color, follow them well into adulthood.

The criminalization of fare evasion also undermines the District's commitment to being a Sanctuary City.¹¹ The Trump administration has emphasized that federal agents should target for deportation any undocumented person if they are convicted of any crime, regardless of severity.¹² An arrest for fare evasion can make an undocumented District resident more vulnerable to federal ICE agents¹³ and fear of arrest can drive undocumented residents underground, cutting them off from accessing basic needs and resources, and having a negative effect on public safety.

At a time of increased federal targeting of immigrants, poor communities, and communities of color, DC should work to counter these discriminatory efforts by

⁷ <http://www.cssny.org/news/entry/css-report-details-targeting-of-high-poverty-black-communities-for-fare-eva> "In the first three months of 2017, the NYPD has arrested 4,600 people for fare evasion, an overwhelming 90 percent of them black or Hispanic. In Brooklyn in 2016, young black men (ages 16-36) made up half of all fare evasion arrests, but represent only 13.1 percent of poor adults"

⁸ Black DC residents make up approximately 50% of the overall population, yet 91% of the DC Jail population. <https://www.census.gov/quickfacts/DC> and https://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/DOC%20Population%20Statistics_Jun17.pdf

⁹ "On buses, MTPD worked with bus operations to target *specific bus routes and times of day* for fare evasions. In the first six months of 2017, MTPD issued 6,961 citations for fare evasion, doubling the number of citations issued in 2016 for the same period of time. MTPD officers also recorded 780 arrests for fare evasion which accounted for 52% of all arrests in the Metro System." <https://www.wmata.com/about/board/meetings/board-pdfs/upload/4A-MTPD-Security-Report-TO-POST.pdf>

¹⁰ "Crime Statistics | WMATA" taken from monthly blotter reports from September 2016-July 2016

¹¹ http://dcist.com/2017/01/mayor_bowser_1.php

¹² <http://www.npr.org/sections/thetwo-way/2017/02/22/516649344/whats-new-in-those-dhs-memos-on-immigration-enforcement>

¹³ There is a particularly troubling story this past summer from Minnesota, in which a transit officer confronted a man about fare evasion and asked him his immigration status, despite the police department's policy against doing so, escalated the situation to using a stun gun, and that man is now facing deportation. <https://www.nytimes.com/2017/05/30/us/minnesota-deported-fare.html>

reforming its own policies and practices that contribute to increased risks of incarceration and for some DC residents, to deportation. Making fare evasion a civil offense is one step in the right direction.

III. Making fare evasion a civil offense can reduce the number of negative confrontations between law enforcement and DC residents.

The Metro Transit Police Department's zero-tolerance enforcement of low-level offenses including eating, drinking, littering, and fare evasion embodies a failed broken-windows approach that does not serve the interests of public safety and can lead to dangerous situations resulting in significant violations of riders' rights.

Aggressive enforcement of these low-level offenses by Metro Transit Police officers has led to unnecessarily confrontational interactions between officers and riders, especially juveniles,¹⁴ that too often result in use of force and serve only to further erode community trust in law enforcement.¹⁵ Making fare evasion a civil, rather than criminal offense can help decrease occasions for confrontations between Metro officers and riders, and avoid escalation of situations that can be much more reasonably and effectively resolved with a civil fine.

IV. There are significant costs associated with enforcing a low-level offense like fare evasion.

According to Metro's Security Report,¹⁶ it has stepped up its enforcement of fare evasion offenses over the last year, employing one approach called High Intensity Target Enforcement (HITEs), in which officers pour into an intersection, consult with bus operators and nab fare evaders aboard buses. When we are talking about cost savings to metro, we should be asking how much it costs to operate these HITEs?

We should also ask ourselves as a community if this is the best use of resources and whether this hyper-policed "high intensity" environment is one that we want to encourage for something as minor as fare evasion. Beyond the initial police enforcement, there are also significant justice system costs in jailing individuals, in court costs, etc. that take both time and resources away from addressing more serious crimes.

¹⁴ See, e.g., http://dcist.com/2016/10/metro_gm_calls_for_review_of_transi.php 2016 incident of Metro police officer took excessive use of force in detaining a girl with a lollipop at the Columbia Heights metro station.

¹⁵ As an example, in May of 2013, the ACLU-DC filed suit for Stacy Winslow on behalf of her minor daughter A.K., whose head was slammed against a bus shelter, resulting in a concussion, by a MTPD officer who believed she was violating the D.C. curfew law when she was going home on the subway after a movie one night. This is one of several cases the ACLU has filed against MTPD since 2010. <https://www.acludc.org/en/node/43294> and https://www.washingtonpost.com/local/aclu-lawsuits-metro-transit-police-officers-assaulted-dc-teens-made-up-charges/2013/05/08/f0b82028-b7ef-11e2-92f3-f291801936b8_story.html?utm_term=.d8e3d03d6784

¹⁶ <https://www.wmata.com/about/board/meetings/board-pdfs/upload/4A-MTPD-Security-Report-TO-POST.pdf>

And that is to say nothing of the costs incurred by saddling thousands of DC residents with arrest records and misdemeanor convictions that will follow them around and serve as barriers to jobs and housing.

Instead of spending money on enforcement of fare evasion, DC could address the lack of affordable housing, jobs, and community supports that are pricing many DC residents out of their only means of transportation.

V. Making fare evasion a civil offense is an emerging best practice.

Around the country, cities and states with significant public transit systems have in recent years begun reevaluating their fare evasion policies, and many have either fully decriminalized fare evasion or stopped enforcing fare evasion laws.¹⁷ The National Association of City Transportation Officials, whose mission is to “build cities with places for people, with safe, sustainable, accessible and equitable transportation” has also publicly opposed criminal enforcement of fare evasion.¹⁸

As Councilmember T. White stated in his remarks during introduction of this bill, “criminalizing riders will not result in an equitable transit system.” Far from it, criminalization leads to harmful collateral consequences for DC residents who already face significant economic barriers and disparate treatment in accessing DC resources.

We applaud Councilmember T. White for leading the charge in introducing this important piece of legislation and to all of the Councilmembers who are co-introducers and co-sponsors. We hope to see it move through the committee and voted into law.

Bill 22-452, the “Clemency Board Establishment Act of 2017”

The ACLU-DC supports the intent of Bill 22-452, the “Clemency Board Establishment Act of 2017” as an important step in addressing the lack of adequate access to clemency for DC Code offenders, and we support the recommendations of the Council for Court Excellence (CCE) and the Community Justice Project at Georgetown University Law School on the composition and operations of this board, contained in their report “Toward Greater Access: A Proposal for a Clemency Solution for DC.”

¹⁷ San Francisco decriminalized fare evasion for adults in 2008, and other cities like Los Angeles and Seattle have taken steps in that direction by decriminalizing fare evasion for youth; prosecutors in Portland have stopped pursuing charges for fare evasion, and New York City, where fare evasion is the most common criminal charge (at 10,000 arrests a year) has also ceased prosecuting these cases. <https://www.marketplace.org/2017/08/31/economy/new-york-wont-arrest-you-stealing-subway-ride-anymore>

¹⁸ “For transit agencies, whose mission should be to help people access their city, punitive approaches to fare collection don’t make sense,” said Alex Engel of the National Association of City Transportation Officials. “A sensitive, sensible approach to inspection is key to creating an equitable system, ‘...Transit systems can train and deploy proof-of-payment fare inspectors to ensure consistent inspection across routes and time of day. Fairness and the safety of both inspectors and riders is paramount; criminalizing riders will not result in an equitable transit system.” found at <https://usa.streetsblog.org/2017/03/08/why-cities-are-starting-to-decriminalize-fare-evasion/>

We do however have a few recommendations for changes to strengthen the bill and bring it more in line with the recommendations in the proposal. These include:

1. Decreasing the amount of time an individual must wait before they can apply for a pardon. Bill 22-452 currently stipulates that an individual convicted of a misdemeanor must wait three years from the completion of their sentence to apply, and a person convicted of a felony must wait five years from the completion of their sentence to apply. Both of these time periods are unreasonably long and would arbitrarily delay relief that an individual needs in order to overcome the collateral consequences of reentry that lead to recidivism and hinder opportunities for successful reintegration. The ACLU-DC supports the recommendation of CCE to allow individuals to apply two years after the end of their incarceration.
2. Allowing public officials from different agencies to directly appoint a member to represent their perspective on the Clemency Board. Bill 22-452 currently allows for relevant agencies to only designate a representative of their agency to serve on the Board, which would result in less independence of Board members from the Office of the Mayor. Related, the CCE proposal recommends that appointed Board members should include a mix of private individuals and public officials. The current wording of the bill does not explicitly include this possibility, the effect of which may be to remove the likelihood of diversity on the Board, not just of policy perspective, but in terms of race, gender, and background. We recommend that this commitment to diversity be clarified in the bill.
3. Explicitly allowing for video or telephone conference hearings for clemency applicants. While the bill does include language that the Board will endeavor to conduct hearings with applicants, there is no mention of video or telephone conference hearings for those applicants who may be deserving of pardons and commutations but who are either located in a federal prison through the Bureau of Prisons thousands of miles away or who may be prevented from showing up at an in-person hearing due to disabilities or other significant limitations.

Thank you.

Testimony
Claudia Barragan
The Committee on the Judiciary Public Hearing
"Fare Evasion Decriminalization Act of 2017"
Thursday, October 19, 2017

Good morning. My name is Claudia Barragan, and I am testifying as a public witness on the "Fare Evasion Decriminalization Act of 2017"

I first wanted to thank councilman Trayon White for his leadership through this important bill and for actively addressing the most pressing needs of district residents of color, youth, low income and immigrants. I come before you as an immigrant district resident, who is tired of seeing discriminatory actions by WMATA Transit Police against communities of color in the region throughout my entire life. WMATA's fare evasion policy is a tool to criminalize and incarcerate black and brown district residents, for what constitutes a civil offense. Gone are the days that we will allow legislation and indiscriminate policies to divide black and brown residents. Let me remind everyone that D.C.'s immigrant rights, civil rights and human rights protect all of us and we are united against racial/ethnic profiling by all police.

All evidence shows that MTPD has not abided by federal Language Access law, which mandates that these rules, strategies and enacted policies be communicated to the public in 6 languages. The criminalization of fare evasion impacts immigrant communities gravely. In the community, we constantly see MTPD harass black and immigrant youth in targeted metro stations, Minnesota Ave, Fort Totten, Anacostia, Congress Heights, Columbia Heights, etc. I will tell you a story I recently heard from Senor Juan, a jornalero (day worker). Day workers are at the bottom of the workforce pool, they are paid between \$5-8 an hour daily. Sr. Juan using his smart trip card took the metro from Columbia Heights to Anacostia, he then boarded a bus and the driver told him he didn't have enough money and must pay or he will call the police. Mr. Juan was confusedly thought the metro to bus transfer was still in effect, luckily, he had \$2 to pay. Mr Juan who is literally building this city, spent an hour's worth of work on bus fare, was threatened by a WMATA staff, feared arrest and potential deportation due to this criminalizing policy. Sanctuary and human rights are current laws in the district, we immigrants are under attack due to the current administration. Three weeks ago, 14 people in the district faced deportation allegedly for criminal acts that included traffic citations, and fare evasion currently is a criminal act. We have 8 thousand Limited English Speaker (LEP) youth in district schools,

while they ride for free, they are still forgetful youth, this overt criminalization threatens them with an arrest. Our immigrant youth are profiled and harassed by MTPD and the public. Many don't speak English and do not know to maneuver the complicated eligibility process for the kids ride free DC one card. The same is the case for Black youth, while walking my dog in a city street I found a DC one card on the sidewalk, it took me three days to mail it, realizing now that youth was at risk of facing arrest by MTPD is troubling.

It should be very worrisome to this council that in just 6 months fare evasion enforcement increased by 114%, that over .5 million dollars' worth of citations/summons were pocketed by WMATA, and 780 arrests were processed by MTPD/MPD. At WMATA's Semi-Annual Security report this past Sept 14, MTPD chief presented strategic solutions that involved terms like "High Intensity Targeted Enforcement (HITE's)", and "targeted deployments". Listening to the chief and WMATA board members one would think we live in a totalitarian state, controlled by a political police force that drastically punishes its residents. Before these strategies continue and become predatory enforcement in district soil district residents and immigrants ask MTPD to provide detailed demographic data, including citations/summons, warnings, and arrest due to fare evasion, from the last 6-month results and a yearly report starting with 2015.

The terms for fines as written in this bill are fair, and comparable nationwide. For example, in NYC, fare evasion and other rider fines are enforced under the rules of conduct. Currently there are different fine amounts for fare evasion per jurisdiction, ranging from \$50-75 none of this information is available on WMATA's website. WMATA should establish a similar standard fine across the system in all jurisdictions. The already pocketed .5 million dollars should be used for a public awareness campaign, similarly to the sexual harassment campaign. Finally, there are other easy to fix civil rights discrepancies by WMATA & MTPD in terms of a complaint process for racial discrimination. This bill addresses the most important one, please pass this bill immediately and provide justice for the most underserved.

Thank you for your time and for the opportunity to hear from me.

Claudia Barragan
cmbarragan@gmail.com - 240-381-0937

Dear Mr. Allen,

As a Ward 6 resident, I am against the Fare Evasion Decriminalization Act of 2017. Metro is finally on the right track to improving safety, both on the trains and in stations. As someone who transits at Gallery Place twice a day, I have noticed the positive impact of increased police presence at what was one of the most problem-prone stations in the system. I have noticed a decrease in antisocial and illegal behaviors because people are finally realizing that the police mean business and will not tolerate such poor behaviors on public transport. That's why removing penalties for fare evasion sends the wrong message is the wrong move right now. The public needs to know that Metro is not a free-for-all where a person can do whatever they please, whenever they please. Stealing a ride on Metro is no different than stealing from a shop or from a government agency, and it is wrong. We need our citizens, especially young people, to know there are consequences to breaking the law if we are to have a law-abiding city. This bill trivializes the sacrifices that law-abiding citizens make every day to pay for Metro fares and follow the law. Our public policy should promote doing the right thing, not give incentives to doing what is wrong. I am sympathetic to the many reasons why some people cannot afford the fare, but instead of rationalizing theft, let's look at the root causes and find solutions. Let's use our budget surplus to fund programs that can help single parents trying to hold down two jobs, but are faced with the high cost of commuting from Ward 8 to Ward 1. Let's use our money to help released convicts who are trying hard to get on their feet but struggling to afford Metro fare to get to job interviews. Let's support funding to help kids get to after-school extracurricular programs on the other side of town. Let's not, however, remove these penalties and give people one more reason why they should break the law.

Thank you,

Ryan Zalaskus

ORAL TESTIMONY
MTPD Chief Ron Pavlik
DC Council Committee on the Judiciary & Public Safety
Thursday, October 19, 2017

- Good afternoon Chairman Allen and members of the Committee, thank you for the opportunity to testify before you today.
- My name is Ronald Pavlik, and I am Chief of the Metro Transit Police Department.
- I'd like to begin my testimony with an overview of Metro's current policy for handling fare evasion in the District of Columbia.

Current Fare Evasion Enforcement Efforts

- Metro, like all transit agencies, must enforce that people pay their fares.
- When a Metro Transit Police officer encounters a person who has failed to pay – meaning the person has jumped a fare gate, walked through the emergency swing gate without authorization, bypassed the fare box at the front of a bus, or avoided payment another way – the officer typically stops the individual, asks for identification, runs a background check, and then issues either a warning or a "failure to pay" citation.
- The vast majority of fare evasion stops – 92 percent of them – end this way. With the issuance of either a warning or a citation.
- Furthermore, juveniles only receive warning notices for fare evasion, as officers cannot issue citations to individuals under the age of 18 in the District.

- A typical "failure to pay" citation is \$50 – half the cost of a speed camera fine in the District of Columbia. And so long as this fine is paid, there is no admission of guilt and criminal charges are avoided altogether.
- Now compare that to other transit agencies across the country – like MARTA in Atlanta – where fare evaders are often charged with "theft of services" – an offense that can result in jail time in addition to a fine.
- Also compare this with someone who refuses to pay a taxicab fare here in the District. In that instance, the person is charged with "theft of services" – an immediate criminal offense.
- The laws regarding fare evasion differ by jurisdiction. In Virginia, for example, fare evasion does result in a criminal record and in some jurisdictions, a court appearance is required.
- In Maryland, most fare evasion citations result in a fine of \$50, which is consistent with the District.

Preventing Other Crimes

- At Metro, like other transit properties, our fare evasion efforts are also essential for preventing other crimes and stopping dangerous individuals from entering the system.
- As I stated earlier, the overwhelming majority of fare evasion stops result in citations or warnings. However, in about 8 percent of our stops, the fare evasion stop will lead to an arrest – often when a routine background check identifies an outstanding warrant.

- In the past 5 days alone, MTPD officers making fare enforcement stops have made **ELEVEN** arrests for individuals with open warrants and recovered **TWO** dangerous/illegal weapons, including a handgun.
- Over the course of this year, 400 wanted individuals with outstanding warrants have been arrested after being stopped for fare evasion. And with fare enforcement stepped up this year, there has been a 20 percent drop in serious crime on the system.

Example Fare Evasion Stop

- Consider just one incident from last month.
- On September 1st, shortly after 3 in the afternoon, a 34-year-old man stepped aboard an A2 Metrobus at the Anacostia Station. The man did not pay his fare and moved toward the back of the bus.
- Two Metro Transit Police Officers, working in casual clothes, approached the man and asked to see his SmarTrip card. Upon investigation, it was confirmed that his SmarTrip card had a negative balance and he was asked to step off the bus.
- Following procedure, the officers identified the man and ran a check for any open warrants. A few moments later, the dispatcher advised that the man was wanted in Prince George's County for second degree murder.
- An arrest was made, and a wanted criminal was taken off the streets.
- This is the story behind one of the more than 400 cases where a wanted individual with an outstanding warrant was arrested after being stopped for fare evasion – before they could commit a more serious crime.

Closing

- Metro's Assistant General Manager for Bus Services, Robert Potts, is here with me today and will share more information regarding the importance of fare enforcement efforts to employee safety and ensuring customer equity.
- In closing, I want to emphasize that this bill would hinder Metro's efforts to reduce fare evasion and ensure the safety of our customers and employees.
- The fact is that the current "failure to pay" statute for fare evasion provides a "decriminalized" option. Existing law in the District already allows citizens to pay the fine without any criminal charge or record.
- Changing this law would signal to DC residents that failing to pay for the services we provide is not a serious infraction and would open the door to new violators.
- Thank you and I look forward to answering your questions.

ORAL TESTIMONY
Robert Potts
DC Council Committee on the Judiciary & Public Safety
Thursday, October 19, 2017

- Good afternoon Chairman Allen and members of the Committee.
- My name is Robert Potts, and I am Metro's Assistant General Manager for Bus Services.
- In this role, I am responsible for providing reliable bus service across the region, while keeping customers and employees safe.

Employee Safety

- Our focus on fare evasion in recent years is largely motivated by the need to protect bus operators and station managers, considering that most assaults on Metro employees result from fare disputes.
- In fact, more than two-thirds of all bus operator assaults are the result of a fare dispute.
- In one recent example, a Metrobus passenger attempted to board a bus without paying.
- When the bus operator informed the man that he was required to pay the fare, the passenger pulled out a 3.5 inch folding knife and told the bus operator "I'm going to kill you."
- As he exited the bus, the knife-wielding passenger continued to threaten the operator, telling him "I'm going to kill you the next time I see you."

- Police located the individual nearby, where they arrested him. He was charged with assault with a dangerous weapon and threats to do bodily harm.
- This is one of 74 bus operator assaults that has occurred this year, most often by customers who refused to pay a fare.
- Our operators, who are residents of the communities served by Metro, have been stabbed, tased, pepper sprayed, hit by thrown objects, and sprayed with fluids.
- And let's not forget, when a bus operator is assaulted, it's not just hurting the operator. All of the passengers aboard that bus are put at risk, not to mention the people on the street and in cars around the bus.
- Metro has taken numerous steps to better protect bus operators. We have:
 - Equipped more than a third of the Metrobus fleet with protective shields,
 - Installed security cameras on every bus
 - Trained operators on conflict avoidance
 - Deployed additional police patrols
 - And programmed automated fare announcements so operators no longer have to personally quote the fare to passengers as they board the bus.
- But in addition to all of this, fare enforcement efforts are still crucial for ensuring employee safety.

- Our fare enforcement efforts play an important role in protecting our employees, and the union has been supportive of these efforts to reduce fare-related disputes.

Customer Equity

- Fare evasion also presents Metro with serious customer equity issues.
- Our efforts around fare evasion are about ensuring that all riders follow the same rules – meaning that all riders use the proper gate and tap a SmarTrip card when riding a bus or entering and exiting the rail system.
- More than 1 million trips are taken on Metrorail and Metrobus every weekday, and every tap counts.
- The federal funding we receive is based on ridership, so every “tap” that isn’t counted has a negative impact on Metro’s ability to buy new railcars and buses, or make station improvements.
- When someone doesn’t pay their fare, they’re hurting paying riders and transit-dependent customers who need Metro the most.
- As DC Councilmembers, you know that Metro doesn’t make a profit.
- The \$1.7 billion needed each year to run our trains and buses, pay our employees, and maintain our daily operations comes from fares paid by customers and additional money paid by the local jurisdictions.
- During our last budget cycle, we had to make difficult decisions to raise fares and cut rail and bus service in order to close a budget gap.

- I'm sure you heard from your constituents about these cuts. Nearly 11,000 Metro customers weighed in during our public comment period, many expressing the hardship that reduced service would cause.
- The service cuts that came out of the FY18 budget process totaled \$16.5 million in savings. That's far less than the amount lost each year to fare evasion.
- So, ensuring that everyone follows the rules equally is an important part of protecting service levels throughout the community.

Closing

- In closing, I want to emphasize that my focus is on the safety of the bus operators I oversee and the more than 400,000 passengers they carry every day.
- We need to explore every opportunity to protect them, and close the door to fare violators.
- Thank you and I look forward to answering your questions.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Executive Office of Mayor Muriel Bowser



Public Hearing on

B22-408, The “Fare Evasion Decriminalization Act of 2017”

Testimony of
Kevin Donahue

Deputy City Administrator
Deputy Mayor for Public Safety and Justice

Committee on the Judiciary and Public Safety
Charles Allen, Chairperson
Council of the District of Columbia

October 19, 2017
Room 123
John A. Wilson Building

Good afternoon, Chairperson Allen, members, and staff of the Committee on the Judiciary and Public Safety. I am Helder Gil, Chief of Staff to Deputy Mayor Kevin Donahue, who could not attend today's hearing due to a family commitment. I am here to present Deputy Mayor Donahue's testimony on Bill 22-408, the "Fare Evasion Decriminalization Act of 2017."

The bill would remove criminal penalties for anyone failing to pay a fare when using Washington Metropolitan Area Transit Authority (WMATA) vehicles, such as Metrobus and Metrorail. Currently, D.C. Official Code § 35-253 provides that, upon arrest and conviction, a person failing to pay their Metro fare could face a maximum penalty of 10 days in jail, a \$300 fine, or both.

Respectfully, I must defer to WMATA and the Office of the Attorney General on the numbers of individuals arrested, prosecuted, and convicted for fare evasion. This is not a criminal violation handled by the Metropolitan Police Department, nor does the Executive have any role in prosecuting or sentencing persons who violate this law.

Bill 22-408 would amend D.C. Official Code § 35-253 by repealing the criminal penalties for fare evasion and replacing them with a civil fine of no more than \$100. The bill would apply to fare evasions that occur in the District, but not if they occur at Metro stations or buses in Maryland or Virginia.

Importantly, the bill does not describe how the civil fine would work – either as to whether it would be issued by the Metro Transit Police Department, which reports to WMATA management and not the Mayor, or whether fines would be appealed to WMATA itself or a District agency such as the Office of Administrative Hearings (OAH).

The Executive is sensitive to some of the reasons Metro users may fail to pay their fares. We are very cognizant of the economic challenges many of our residents face in choosing between paying a fare or paying for other critical needs. We also recognize that many of our residents rely on Metro as their only transportation option. At the same time, we have seen reports of a significant increase in the number of warnings, citations, and arrests by the Metro Transit Police Department for fare evasions.

In response to this issue, we have implemented a program to help our youngest residents pay for Metro transportation costs. The Kids Ride Free program allows District public and charter school students, up to the age of 21, to ride Metro and the Circulator for free if they are enrolled in an elementary or secondary school located in the District. The program, which is administered by the Office of the State Superintendent of Education (OSSE), uses an electronic Kids Ride Free Metro pass that is loaded onto almost 55,000 DC One Cards issued to public and charter school students. For the past several months, OSSE, the Deputy Mayor for Education, and WMATA have coordinated an educational outreach campaign to raise students' awareness on loading and using their DC One Cards. A copy of the Kids Ride Free informational flyer is attached to my testimony. WMATA also provides discounted Metro fares to users aged 65 and above, veterans with disabilities, and users under the age of 65 who are Medicare recipients. Additionally, a number of the District's adult education and job training programs provide transportation subsidies to encourage their participants to use Metro.

We have concerns about whether removing criminal penalties may adversely impact Metro transit operators and personnel. Our understanding is that a significant number of assaults on Metro transit operators arise from disputes over fare evasions. In removing the criminal penalties, there could be the unintended consequence of increasing the number of fare evasions by individuals who believe there is no penalty at all for failing to pay their fare. This could lead to an increase in confrontations with WMATA employees seeking to prevent users from boarding a Metro bus or entering a Metro station without paying their fare.

We must send a clear message that assaulting our public transportation employees or users will not be tolerated. With the significant increase in assaults against Metro transit operators, especially Metro bus drivers, the Executive supports enhanced penalties for any assaults or violent crimes committed against WMATA employees or users on WMATA vehicles or property.

Finally, the Executive has significant concerns on how a civil penalty scheme would be enforced. We have a number of years of experience in having Metropolitan Police Department officers issue civil fines for people littering, and a short experiment with marijuana decriminalization. The numbers of civil infractions that are paid are very low: approximately 75 percent of the civil fines wind up in default.

Part of the reason for low collection of fines may be that the person is not required to provide any government-issued identification when being issued the civil infraction, so they may provide a false identity or false address. An additional reason may be that while a failure to pay the civil fine could result in it doubling, there is little risk of it ever being collected by the Office of Administrative Hearings. There are simply no enforceable repercussions when the government cannot definitively identify an individual violating the law.

We have concerns that Bill 22-408 would have the same low collection rates as was tried with littering and marijuana, and that it could lead to more fare evasion because the public would believe there is no real penalty for failing to pay the Metro fare.

Thank you for the opportunity to provide testimony on this bill. I welcome your questions.

DC KIDS RIDE FREE



STUDENT CHECKLIST

2 WEEKS BEFORE SCHOOL STARTS

- ☐ Make sure you are enrolled in a DC public or public charter school.
- ☐ Find your DC One Card or contact your school if you do not have one.
- ☐ Confirm your pass is loaded by checking your card status at dconecard.dc.gov or calling 202-673-1740.
- ☐ If your pass is NOT loaded, follow the pass loading instructions **before** school starts.

Private school students are still required to see their ID administrator and then register at dconecard.dc.gov to participate in the Kids Ride Free on Bus program. Private school students are not eligible for the free Metrorail benefit but can purchase the \$30 monthly pass.

IF YOUR PASS IS NOT LOADED, FOLLOW THESE STEPS

BEST option! OPTION 1 Load at Metrorail Station

1. Take your DC One Card to a Metrorail station and tap it at a fare vending machine. If you see a negative balance, add money to bring it up to \$0.



Negative balances block the pass from working.



2. On the **next day**, return to the same Metrorail station and tap the card again on a fare vending machine to load the pass.

3. **Tap your card** on a faregate or farebox to use your pass.

→ Loading the pass at a Metrorail station is faster than on a bus and does not risk incurring a negative fare balance.

OPTION 2 Load on Metrobus or DC Circulator

1. Tap your DC One Card on a Metrobus farebox.
2. Wait **3 business days** for the pass to become available for loading.



3. **Tap the card** again on any Metrobus farebox to complete loading and to use the pass.

NO PASS, NO FREE RIDE

Until the free pass loads onto your DC One Card, students **MUST** pay regular fare to ride Metrorail, Metrobus or DC Circulator.

Need Help?

Call the DDOT School Transit Office at (202) 673-1740 or visit kidsridefree.dc.gov.



o c t o d .



WE ARE
GOVERNMENT OF THE
DISTRICT OF COLUMBIA
MURIEL BOWSER, MAYOR

THE
PUBLIC
DEFENDER
SERVICE
for the District of Columbia



COMMENTS OF THE PUBLIC DEFENDER SERVICE
FOR THE DISTRICT OF COLUMBIA

concerning

FARE EVASION DECRIMINALIZATION ACT OF 2017

BILL 22-0408

Presented by

Katerina Semyonova

before

COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY
COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Charles Allen

October 19, 2017

Avis E. Buchanan, Director
Public Defender Service
633 Indiana Avenue, N.W.
Washington, D.C. 20004
(202) 628-1200

Thank you for the opportunity to testify on Bill 22-0408, the Fare Evasion Decriminalization Act. I am Katerina Semyonova, Special Council to the Director on Policy and Legislation at the Public Defender Service for the District of Columbia. PDS strongly supports this bill and urges the Council to act as soon as possible to stop subjecting individuals to arrest, incarceration, misdemeanor criminal convictions, and collateral consequences all stemming from the failure to pay for public transportation.

Arresting, incarcerating, and prosecuting individuals for fare evasion wreaks havoc on poor communities. A person arrested on a Saturday afternoon for fare evasion under D.C. Code § 35-216 will not see a judge until Monday afternoon.¹ That individual will spend up to 48 hours in custody for failing to pay a fare that can range from about \$2 to \$6. Those 48 hours will include time confined inside an MPD police district or in the custody of the Metro Transit Police Department (MTPD), hours spent in the large holding cell at central cellblock, and hours in a basement holding cell in Superior Court. The individual will have no guaranteed right to call loved ones or an employer and will be stripped of all his or her personal property, which must be collected later from the MPD police district or the MTPD. In many instances, fare evasion cases are not papered by prosecutors. But the damage of two nights in jail, two nights away from family, up to three days of missed work will have already been done. For cases that are prosecuted,

¹ *Gerstein v. Pugh*, 420 U.S. 120 (1975) required "prompt" judicial determinations of whether the police had probable cause to support an arrest. *Riverside v. McLaughlin*, 500 U.S. 44 (1991) further refined the requirement of promptness and set 48 hours as the outer limit in which a judicial determination of probable cause must be made. In the District, judicial determinations of probable cause and decisions regarding pretrial release occur in Superior Court daily, except for Sundays. Individuals who are arrested after Saturday's "cut-off" time for presentment in court have their cases heard on Mondays, with priority given to individuals who are approaching the 48-hour line. Prosecutors typically make decisions about papering and prosecuting new arrests during the morning that the individual would be seen in court. Except for Saturdays, which have a slightly later cut off time, individuals arrested after about 10:00 a.m. on a weekday would not be seen in Superior Court until after 1 p.m. the following day.

fare evasion is a misdemeanor offense and carries a maximum punishment of imprisonment for 10 days and a fine of \$300.²

The consequences of an arrest for fare evasion are also dire for individuals who are already involved in the justice system. District residents who have completed sentences of incarceration for a felony typically serve a period of supervised release in the community. Individuals who were sentenced under the District's indeterminate sentencing scheme for offenses that took place prior to August 5, 2000, and have been released from prison are placed on parole. Individuals who are on supervised release and parole are under the jurisdiction of the United States Parole Commission. While D.C. Code § 35-253 provides for a maximum of 10 days of incarceration for fare evasion, the United States Parole Commission treats fare evasion the same as any other low level misdemeanor and uses it as a basis to revoke release and to sentence District residents to, on average, another 12 to 16 months of incarceration. The United States Parole Commission can impose 12 to 16 months of incarceration even if the fare evasion case is dismissed in Superior Court. To be clear, this is not an abstract hypothetical. PDS currently has had clients awaiting parole revocation at the D.C. jail in cases where the only law violation is fare evasion. Since the District gave up control over individuals on parole and supervised release under the Revitalization Act and ceded the authority to adjudicate alleged violations while on release to the United States Parole Commission, the only way to prevent the lengthy and unnecessary incarceration of individuals on parole and supervised release for fare evasion is to make fare evasion a civil offense.

² D.C. Code § 35-253 provides penalties for violation of D.C. Code § 35-216, entitled "Failure to pay established fare or to present valid transfer; entry by rear exit door prohibited."

The criminalization of fare evasion also exposes individuals to collateral consequences stemming from the arrest and conviction. Since fare evasion is a misdemeanor, under current law an individual must wait a full 8 years before he can move a Superior Court judge to seal the record of the fare evasion conviction. Further, only one misdemeanor conviction can be sealed. If the individual is trying to seal prejudicial non-convictions from his record, a conviction for fare evasion that follows those arrest records will trigger a five year waiting period before the individual can move to seal his arrest records. In the meantime, that individual is subject to all of the consequences that may stem from criminal convictions and arrest records— job loss, discrimination in housing, and a loss of self-esteem that may inhibit the individual in applying for new jobs or a promotion. A conviction for fare evasion may also trigger immigration consequences for documented and undocumented individuals. Fare evasion would likely be considered a crime of moral turpitude by immigration authorities. As a result, two convictions for fare evasion would make an individual ineligible for a green card and would cause an individual's Temporary Protected Status to be revoked. Two convictions for fare evasion would also make a green card holder deportable. The loss to the community from criminalizing fare evasion is enormous.

On the other side of this equation, there is no evidence that criminalizing fare evasion meaningfully deters fare evasion or that punishment for fare evasion is imposed in such a way that it compensates for the financial loss to the public transit system. Even a quick review of arrest lists from Superior Court shows that many fare evasion cases are no papered by the Office of the Attorney General. As such, those cases are concluded

without a fine ever being recovered by the District.³ When cases do make their way through the court system, it is highly unlikely that a Superior Court judge would impose a \$300 fine on an individual who couldn't afford to pay metro fare in the first instance. MPD or Metro Transit Police also resolve fare evasion arrests through a \$50 citation, or post and forfeit, in lieu of arrest. That amount comes to only half of the maximum fine that could be imposed under the civil offense proposed in Bill 22-0408. The criminalization of fare evasion also carries substantial costs for the District, from the cost of meals provided during up to 48 hours of detention, to staffing in the MPD holding cells, youth detention cells, and central cellblock, to the overtime hours for MPD officers who process the arrest and meet with prosecutors the following day.

A civil offense and fine – just as the District already successfully employs for violations ranging from failing to move for street cleaning to parking meter violations – is the appropriate way to deal with and deter the loss of legitimate funds to public transportation caused by fare evasion. Under Bill 22-0408, MPD officers and Metro Transit Police officers would stop individuals and issue civil citations. An enforcement mechanism for citations already exists in D.C. Code § 50-2303.07, which requires pedestrians stopped for infractions to provide a true name and address for the notice of infraction. Failure to provide a true name and address subjects the individual to arrest, and a separate fine of not less than \$100 and not more than \$250.

In addition to passing Bill 22-0408, PDS urges the Council to consider payment options for individuals who are issued tickets for fare evasion and fare discount programs for individuals living in poverty. Fare evasion is largely a crime of the poor, who also

³ Even if a fine is imposed in Superior Court it is not clear that funds from that fine would be reallocated from Superior Court to WMATA.

face higher travel costs in the District's system where Metro fares are pegged to distance traveled and neighborhoods with the lowest housing costs are typically farthest from employment opportunities, courts, and government offices. To address the financial limitations of individuals who will likely be issued fines for fare evasion, the Council should provide an avenue for satisfying the fine through the completion of community service hours. In order to avoid fare evasion, the Council should also consider extending reduced fare transit benefit programs to the more than 110,000 District residents living in poverty who may fail to pay Metro fares simply because they cannot afford them.⁴

Finally, it is important to note that in order for the Council to make fare evasion truly subject to civil fine rather than arrest, the Council must do more than proposed in Bill 22-0408. Bill 22-0408 amends only D.C. Code § 35-253, the penalty provision that addresses violation of D.C. Code §35-216. D.C. Code §35-216 is how fare evasion on public transportation is typically charged, but it is not the only way of charging that conduct. D.C. Code §22-3211, the second degree theft statute, can also be used to charge theft of services on public transportation. By closing the door to arrest for fare evasion under D.C. Code § 35-216, the Council may inadvertently incentivize arrest for second degree theft, which carries a lengthier sentence of 180 days of incarceration and a \$1000 fine or both.⁵ To truly make failure to pay public transportation fare a civil offense, the

⁴ See fact sheet by the District of Columbia Office of Planning: "Poverty in the District of Columbia 2014," available at: https://planning.dc.gov/sites/default/files/dc/sites/op/page_content/attachments/Poverty%20in%20DC%202014_1.pdf.

⁵ D.C. Code §22-3211 provides that: "A person commits the offense of theft if that person wrongfully obtains or uses the property of another with intent:

- (1) To deprive the other of a right to the property or a benefit of the property; or
- (2) To appropriate the property to his or her own use or to the use of a third person.

(c) In cases in which the theft of property is in the form of services, proof that a person obtained services that he or she knew or had reason to believe were available to him or her only for compensation and that he or she departed from the place where the services were obtained knowing or having reason to believe that

Council must amend the second degree theft statute as well by directing that fare evasion on public transportation be considered under D.C. Code §35-216.

no payment had been made for the services rendered in circumstances where payment is ordinarily made immediately upon the rendering of the services or prior to departure from the place where the services are obtained, shall be prima facie evidence that the person had committed the offense of theft." Pursuant to D.C. Code § 22-3212, theft is punished by a maximum term of imprisonment of 180 days which under D.C. Code § 22-3571.01 corresponds to a maximum fine of \$1000.



D.C. Criminal Code Reform Commission

441 Fourth Street, NW, Suite 1C001S, Washington, D.C. 20001
(202) 442-8715 www.ccrcc.dc.gov

To: Councilmember Charles Allen
Chairperson, Committee on the Judiciary and Public Safety
From: Richard Schmechel
Executive Director, Criminal Code Reform Commission (CCRC) *RS*
Date: October 17, 2017
Re: Written testimony for the October 19, 2017 Public Hearing on the Fare Evasion
Decriminalization Act of 2017

Dear Chairman Allen,

Thank you for the opportunity to provide written testimony for the record of the public hearing on the Fare Evasion Decriminalization Act of 2017 (FEDA bill), to be held on October 19, 2017. I write on behalf of the Criminal Code Reform Commission (CCRC).

The CCRC is a small, independent District agency that began operation October 1, 2016. The CCRC's mission is to prepare comprehensive recommendations for the Mayor and Council on reform of the District's criminal statutes. Specifically, the CCRC's work is focused on developing possible reforms to the District's "substantive" criminal statutes—i.e., laws that define crimes and punishments. Given the CCRC's limited time to develop recommendations, the agency has been focused on the most serious and common crimes in the District.

The CCRC below provides information on the relationship between the fare evasion conduct at issue in the FEDA bill and overlapping District criminal laws which punish such behavior. However, the CCRC has no recommendation concerning the proposed FEDA bill itself, and, at this time, the agency has no plans to develop recommendations for the D.C. Code sections affected by the FEDA bill: D.C. Code § 35-216¹ and § 35-253².

Specifically, the CCRC notes that a person engaging in fare evasion likely would remain subject to criminal prosecution under the District's theft statute, D.C. Code § 22-3211,³ notwithstanding decriminalization of fare evasion conduct under D.C. Code § 35-216 and § 35-253 in the FEDA bill. Per the relevant definitions of "property"⁴ and "services,"⁵ the District's theft statute criminalizes the unauthorized use of transportation. In fact, the current theft statute contains a special evidentiary provision⁶ that provides an alternative means of proving theft of services (such as a ride on public transportation). This evidentiary provision may make it easier to prove a theft charge for fare evasion than a charge under the statutes targeted by the FEDA bill.⁷

Prosecution for fare evasion under the District's theft statute would provide significantly greater penalties as compared to the statutes targeted by the FEDA bill. Under current District law, fare evasion would be prosecuted as theft in the second degree and would be subject to imprisonment of 180 days or a fine of up to \$1,000 for the first conviction, or both.⁸ If that person has *one prior conviction* for theft, he or she would be subject to an enhanced penalty of 270 days imprisonment and a fine up to \$1,500.⁹ If that person has *two prior convictions* for thefts on different occasions, he or she would be subject to a mandatory minimum imprisonment sentence of one year, a maximum imprisonment term of 15 years, and a fine of up to \$37,500, or both.¹⁰ By contrast, a first conviction for fare evasion prosecuted under D.C. Code § 35-216 and § 35-253, targeted in the FEDA bill, would be subject to imprisonment of only 10 days or a fine of not more than \$300, or both.¹¹ A person with *one prior conviction* under D.C. Code § 35-216 and § 35-253 would be subject to an enhancement of 15 days imprisonment and a fine up to \$450.¹² A person with *two such prior convictions* would be subject to an enhancement of 30 days imprisonment and a fine up to \$900.¹³

Prosecutorial authority for fare evasion under the District's theft statute is also different from the authority specified in D.C. Code § 35-216 and § 35-253, the statutes targeted by the FEDA bill. Prosecutorial authority for an adult alleged to have committed theft of services (such as a ride on public transportation) would fall to the Office of the United States Attorney for the District of Columbia (USAO-DC). By contrast, the statutes targeted by the FEDA bill provide prosecutorial authority to the District's Office of the Attorney General (OAG).

It is unknown to the CCRC whether, or to what extent, fare evasion currently is prosecuted as theft of services instead of D.C. Code § 35-216, the focus of the FEDA bill. The Superior Court does not record the precise type of conduct involved in its records for theft convictions. Regardless of existing practice, passage of the FEDA bill could change future charging practices and convictions. Moreover, depending on the facts of the case, fare evasion might also constitute a violation of District criminal laws besides theft and D.C. Code § 35-216—e.g., unlawful entry of a motor vehicle.¹⁴

The CCRC is currently developing recommendations for the Council and Mayor for reform of the District's theft and unlawful entry of a motor vehicle offenses. At present, however, the CCRC is not planning to recommend a change that would eliminate the overlap between theft, unlawful entry of a motor vehicle, and the statutes in the FEDA bill, D.C. Code § 35-216 and § 35-253. For questions about this testimony or the CCRC's work, please do not hesitate to contact our office. Additional information on the agency's work is available at www.ccrdc.gov.

Testimony Submitted by Richard Schmechel
Executive Director
D.C. Criminal Code Reform Commission

¹ D.C. Code § 35-216 ("No person shall either knowingly board a public or private passenger vehicle for hire, including vehicles owned and/or operated by the Washington Metropolitan Area Transit Authority, which is transporting passengers within the corporate limits of the District of Columbia; or knowingly board a rail transit car owned and/or operated by the Washington Metropolitan Area Transit Authority which is transporting passengers within the corporate limits of the District of Columbia; or knowingly enter or leave the paid area of a real transit station owned and/or operated by the Washington Metropolitan Area Transit Authority which is located within the corporate limits of the District of Columbia without paying the established fare or presenting a valid transfer for transportation on such public passenger vehicle or rail transit car. No person shall board a public or private passenger vehicle for hire, including vehicles owned and/or operated by the Washington Metropolitan Area Transit Authority, through the rear exit door, unless so directed by an employee or agent of the carrier.").

² D.C. Code § 35-253 ("Violation of § 35-251(b) shall be punishable by a fine of not less than \$10 nor more than \$50 for a 1st offense and by a fine of not less than \$50 nor more than \$100 or by imprisonment for not more than 10 days or both for each 2nd or subsequent offense. A violation of § 35-251(c) or (d) shall be punishable by a fine of not more than \$300, imprisonment of not more than 90 days, not fewer than 30 hours of community service, or a combination of any 2 penalties, except that imprisonment and community service shall not be imposed together. A violation of § 35-216 shall be punishable by a fine of not more than \$300, by imprisonment for not more than 10 days, or both. All prosecutions under §§ 35-216 and 35-251 to 35-253 shall be brought by the Corporation Counsel.").

³ D.C. Code § 22-3211 ("(a) For the purpose of this section, the term 'wrongfully obtains or uses' means: (1) taking or exercising control over property; (2) making an unauthorized use, disposition, or transfer of an interest in or possession of property; or (3) obtaining property by trick, false pretense, false token, tampering, or deception. The term 'wrongfully obtains or uses' includes conduct previously known as larceny, larceny by trick, larceny by trust, embezzlement, and false pretenses. (b) A person commits the offense of theft if that person wrongfully obtains or uses the property of another with intent: (1) To deprive the other of a right to the property or a benefit of the property; or (2) To appropriate the property to his or her own use or to the use of a third person.").

⁴ D.C. Code § 22-3201(3) ("Property" means anything of value. The term "property" includes, but is not limited to: (A) Real property, including things growing on, affixed to, or found on land; (B) Tangible or intangible personal property; (C) Services; (D) Credit; (E) Debt; and (F) A government-issued license, permit, or benefit.").

⁵ D.C. Code § 22-3201(5) ("Services" includes, but is not limited to: (A) Labor, whether professional or nonprofessional; (B) The use of vehicles or equipment; (C) Transportation, telecommunications, energy, water, sanitation, or other public utility services, whether provided by a private or governmental entity; (D) The supplying of food, beverage, lodging, or other accommodation in hotels, restaurants, or elsewhere; (E) Admission to public exhibitions or places of entertainment; and (F) Educational and hospital services, accommodations, and other related services.").

⁶ D.C. Code § 22-3211(c) ("In cases in which the theft of property is in the form of services, proof that a person obtained services that he or she knew or had reason to believe were available to him or her only for compensation and that he or she departed from the place where the services were obtained knowing or having reason to believe that no payment had been made for the services rendered in circumstances where payment is ordinarily made immediately upon the rendering of the services or prior to departure from the place where the services are obtained, shall be prima facie evidence that the person had committed the offense of theft.").

⁷ The theft evidentiary provision appears to require only a negligent mental state on the part of the defendant ("had reason to believe")—a lower burden of proof than the "knowing" mental state required in D.C. Code § 35-216.

⁸ D.C. Code § 22-3212(b). ("Any person convicted of theft in the second degree shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 180 days, or both, if the property obtained or used has some value.").

⁹ D.C. Code § 22-1804. ("(a) If any person: (1) is convicted of a criminal offense (other than a non-moving traffic offense) under a law applicable exclusively to the District of Columbia; and (2) was previously convicted of a criminal offense under any law of the United States or of a state or territory of the United States which offense, at the time of the conviction referred to in clause (1) of this subsection, is the same as, constitutes, or necessarily includes, the offense referred to in that clause, such person may be sentenced to pay a fine in an amount not more than one and one-half times the maximum fine prescribed for the conviction referred to in clause (1) of this subsection and sentenced to imprisonment for a term not more than one and one-half times the maximum term of imprisonment prescribed for that conviction. If such person was previously convicted more than once of an offense described in clause (2) of this subsection, such person may be sentenced to pay a fine in an amount not more than 3 times the maximum fine prescribed for the conviction referred to in clause (1) of this subsection and sentenced to

imprisonment for a term not more than 3 times the maximum term of imprisonment prescribed for that conviction. No conviction with respect to which a person has been pardoned on the ground of innocence shall be taken into account in applying this section.").

¹⁰ D.C. Code § 22-3212(c). ("A person convicted of theft in the first or second degree who has 2 or more prior convictions for theft, not committed on the same occasion, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 15 years and for a mandatory-minimum term of not less than one year, or both. A person sentenced under this subsection shall not be released from prison, granted probation, or granted suspension of sentence, prior to serving the mandatory-minimum. (d) For the purposes of this section, a person shall be considered as having 2 or more prior convictions for theft if he or she has been convicted on at least 2 occasions of violations of: (1) § 22-3211; (2) A statute in one or more jurisdictions prohibiting theft or larceny; or (3) Conduct that would constitute a violation of § 22-3211 if committed in the District of Columbia.").

¹¹ D.C. Code § 35-253.

¹² D.C. Code § 22-1804(a).

¹³ D.C. Code § 22-1804(a).

¹⁴ D.C. Code § 22-1341("a) It is unlawful to enter or be inside of the motor vehicle of another person without the permission of the owner or person lawfully in charge of the motor vehicle. A person who violates this subsection shall, upon conviction, be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 90 days, or both.").

ATTACHMENT E

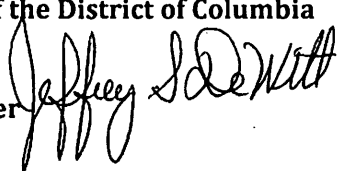
Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: October 4, 2018

SUBJECT: Fiscal Impact Statement – Fare Evasion Decriminalization Amendment Act of 2018

REFERENCE: Bill 22-408, Draft Committee Print as shared with the Office of Revenue Analysis on October 1, 2018

Conclusion

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill.

Background

It is unlawful to fail to pay fares for any public or private passenger service, including bus and rail services operated by the Washington Metropolitan Area Transit Authority (WMATA).¹ Failure to pay a fare is punishable by a fine of up to \$300, imprisonment of up to ten days, or both.²

It is also unlawful to do any of the following activities on a public passenger vehicle,³ including bus and rail services operated by WMATA: smoke; eat or drink; spit; litter; play music without earphones; bring flammable or combustible liquids; bring non-service animals that are not small and properly contained; or park, operate, wheel, carry, or chain to any object not designed for that activity any noncollapsible bicycles, tricycles, mopeds, motorbikes, skateboards, or rollers skates.⁴ Any of these violations carry a penalty of a fine up to \$50 for a first offense and up to \$100, 10 days imprisonment, or both for a subsequent offense.⁵

¹ Effective February 22, 1978 (D.C. Law 2-40; D.C. Official Code § 35-216).

² Act to Regulate Public Conduct on Public Passenger Vehicles, effective September 23, 1975, (D.C. Law 1-18; D.C. Official Code § 35-253).

³ These are public passenger vehicles that carry twelve or more passengers.

⁴ D.C. Official Code § 35-251(b).

⁵ D.C. Official Code § 35-253.

The Honorable Phil Mendelson

FIS: Bill 22-408, "Fare Evasion Decriminalization Amendment Act of 2018," Draft Committee Print as shared with the Office of Revenue Analysis on October 1, 2018

The bill eliminates the criminality associated with these activities⁶ and authorizes law enforcement to issue civil fines of up to \$50 for these infractions. The bill also makes it legal to carry or wheel a bicycle on a WMATA Metrorail train to the extent authorized by WMATA.⁷

Financial Plan Impact

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill. From 2015 through 2017, approximately 100 individuals arrested for fare evasion pleaded or were found guilty of fare evasion.⁸ Many of those people received suspended jail sentences, probation, and suspended fines. The bill's decriminalization of fare evasion changes the penalties from criminal to civil in nature and reduces fine revenue potential from up to \$300 to up to \$50 per infraction. Since the fines are often suspended during adjudication, any impact to the revenue collected by the District is expected to be de minimis.

WMATA enforcement officers will continue to enforce these violations as they do today, but the violations will be civil, rather than criminal, infractions.

⁶ Except for the carrying of flammable or combustible liquids, explosives, acids, or similar items. Penalties for these activities can be a fine of \$300, imprisonment of up to 90 days, at least 30 hours of community service, or any two of these penalties (imprisonment and community service cannot both be used).

⁷ <https://www.wmata.com/about/contact/faq.cfm#faq11>

⁸ Over this same time period, approximately 2,560 people were arrested for fare evasion and the Attorney General has only prosecuted 31 percent of those cases.

ATTACHMENT F



OFFICE OF THE GENERAL COUNSEL

Council of the District of Columbia
1850 Pennsylvania Avenue NW, Suite 4
Washington, DC 20004
(202) 724-8026

MEMORANDUM

TO: Councilmember Charles Allen

FROM: Nicole L. Streeter, General Counsel *NLS*

DATE: October 3, 2018

RE: Legal sufficiency determination for Bill 22-408, the
Fare Evasion Decriminalization Amendment Act of
2018

The measure is legally and technically sufficient for Council consideration.

This bill would amend the Act to Regulate Public Conduct on Public Passenger Vehicles to clarify unlawful conduct on passenger vehicles. The bill would also modify the penalties for fare evasion and other unlawful conduct on passenger vehicles.

The bill would amend the Omnibus Public Safety and Justice Amendment Act of 2009 to provide that fare evasion does not constitute unlawful entry of a motor vehicle.

The bill would also amend the District of Columbia Theft and White Collar Crimes Act of 1982 to provide that fare evasion does not constitute theft.

I am available if you have any questions.

ATTACHMENT G

**Comparative Committee Print
B22-0408
Committee on the Judiciary & Public Safety
October 4, 2018**

Section 2

§ 22–1341. Unlawful entry of a motor vehicle.

(a) It is unlawful to enter or be inside of the motor vehicle of another person without the permission of the owner or person lawfully in charge of the motor vehicle. A person who violates this subsection shall, upon conviction, be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 90 days, or both.

(b) Subsection (a) of this section shall not apply to:

(1) An employee of the District government in connection with his or her official duties;

(2) A tow crane operator who has valid authorization from the District government or from the property owner on whose property the motor vehicle is illegally parked; or

(3) A person with a security interest in the motor vehicle who is legally authorized to seize the motor vehicle.

(c) For the purposes of this section, the term “enter the motor vehicle” means to insert any part of one’s body into any part of the motor vehicle, including the passenger compartment, the trunk or cargo area, or the engine compartment.

(d) A violation of section 3 of the Act to Regulate Public Conduct on Public Passenger Vehicles, effective February 22, 1978 (D.C. Law 2-40; D.C. Official Code § 35-252), shall not constitute a violation of this section.

Section 3

§ 22–3211. Theft.

(a) For the purpose of this section, the term “wrongfully obtains or uses” means: (1) taking or exercising control over property; (2) making an unauthorized use, disposition, or transfer of an interest in or possession of property; or (3) obtaining property by trick, false pretense, false token, tampering, or deception. The term “wrongfully obtains or uses” includes conduct previously known as larceny, larceny by trick, larceny by trust, embezzlement, and false pretenses.

(b) A person commits the offense of theft if that person wrongfully obtains or uses the property of another with intent:

(1) To deprive the other of a right to the property or a benefit of the property; or

(2) To appropriate the property to his or her own use or to the use of a third person.

(c) In cases in which the theft of property is in the form of services, proof that a person obtained services that he or she knew or had reason to believe were available to him or her only for compensation and that he or she departed from the place where the services were obtained knowing or having reason to believe that no payment had been made for the services rendered in circumstances where payment is ordinarily made immediately upon the rendering of the services

or prior to departure from the place where the services are obtained, shall be prima facie evidence that the person had committed the offense of theft.

(d) A violation of section 3 of the Act to Regulate Public Conduct on Public Passenger Vehicles, effective February 22, 1978 (D.C. Law 2-40; D.C. Official Code § 35-252), shall not constitute a violation of this section.

Section 4

§ 35-251. Unlawful conduct on public passenger vehicles.

(a) For the purposes of this section, the term "rail transit station" means a regular rail stopping place for the pick-up and discharge of passengers in regular route service, contract service, special or community-type service, including the fare-paid areas and roofed areas of the rail transit stations (not bus terminals or bus stops) owned, operated, or controlled by the Washington Metropolitan Area Transit Authority ("WMATA"); provided, that the term "rail transit station" shall not include parking lots, roadways and other areas intended for vehicle traffic.

(b) It is unlawful for any person, either while aboard a public passenger vehicle for hire with a capacity for seating 12 or more passengers, including vehicles owned and/or operated by ~~the Washington Metropolitan Area Transit Authority WMATA, which is transporting passengers in regular route service within the corporate limits of the District of Columbia;~~ or while aboard a rail transit car owned and/or operated by ~~the Washington Metropolitan Area Transit Authority WMATA which is transporting passengers within the corporate limits of the District of Columbia;~~ or while within a rail transit station owned and/or operated by ~~the Washington Metropolitan Area Transit Authority WMATA, which is located within the corporate limits of the District of Columbia to:~~

- (1) Smoke or carry a lighted or smoldering pipe, cigar, or cigarette;
- (2) Consume food or drink beverages;
- (3) Spit;
- (4) Discard litter;
- (5) Play any radio, ~~cassette, recorder,~~ musical instrument, or ~~other such~~ similar device, unless it is connected to an earphone that limits the sound to the individual user;
- (6) Carry any flammable or combustible liquids, ~~live animals,~~ explosives, acids, or any other item inherently dangerous or offensive to others, ~~except for seeing eye dogs properly harnessed and accompanied by a blind passenger and for small animals properly packaged;~~
- (7) Carry any animals, except for guide dogs properly harnessed and small animals properly contained;
- (~~7~~8) Stand in front of the ~~white~~ line marked on the forward end of the floor of any bus or otherwise conduct ~~himself themselves~~ in such a manner as to obstruct the vision of the operator;
- (~~8~~9) ~~Park, o~~Operate, ~~wheel,~~ or chain to any fence, tree, railing, or other structure not specifically designated for such use, skateboards, rollerblades, roller stakes, non-motorized scooters, bicycles, tricycles, or unicycles, skate boards, or roller skates; or
- (~~9~~10) Park, operate, carry, wheel, or chain to any fence, tree, railing, or other structure not specifically designated for such use, mopeds, motorbikes, or any ~~other such~~ similar vehicle;.

~~(10) Park, operate, carry, wheel, or chain to any fence, tree, railing, or other structure not specifically designated for such use, noncollapsible bicycles, unless an individual has a current permit issued by the Washington Metropolitan Area Transit Authority for the transporting of noncollapsible bicycles by rail transit and the individual is complying with all the terms and conditions of said permit; provided, that an individual shall surrender said permit upon the request or demand of any agent or employee of the Washington Metropolitan Area Transit Authority. Sections 35-252 and 35-253 shall not apply to a violation of the terms and conditions of said permit.~~

(c) It is unlawful for any person, while aboard a rail transit car ~~which is transporting passengers within the District of Columbia~~, knowingly to cause the doors of any rail transit car to open by activating a safety device designed to allow emergency evacuation of passengers. It is an affirmative defense to a prosecution under this subsection that the person charged believed, in good faith, that the action was necessary to protect people from injury or death.

(d) It is unlawful for any person at a rail transit station to stop, impede, interfere with, or tamper with an escalator or elevator or any part of an escalator or elevator apparatus or to use an escalator or elevator emergency stop button, unless this action is taken by a person with the knowledge or the reasonable good faith belief that an emergency makes the action necessary to preserve or protect human life or property, or unless such action is taken by a WMATA employee, other government employees, or WMATA contractor acting pursuant to their official duties.

§ 35-21652. Failure to pay established fare or to present valid transfer; entry by rear exit door prohibited.

Except in emergency circumstances, n~~No person shall either knowingly:~~

(1) Take the following actions without paying the established fare or presenting a valid transfer:

(A) B~~board~~ a public or private passenger vehicle for hire, including vehicles owned and/or operated by the Washington Metropolitan Area Transit Authority ("WMATA")~~; which is transporting passengers within the corporate limits of the District of Columbia;~~

(B) or knowingly b~~Board~~ a rail transit car owned and/or operated by the Washington Metropolitan Area Transit Authority WMATA ~~which is transporting passengers within the corporate limits of the District of Columbia; or~~

(C) knowingly e~~Enter or leave the fare-paid area of a real rail transit station owned and/or operated by the Washington Metropolitan Area Transit Authority WMATA; or which is located within the corporate limits of the District of Columbia without paying the established fare or presenting a valid transfer for transportation on such public passenger vehicle or rail transit car.~~

(2) No person shall b~~Board~~ a public or private passenger vehicle for hire, including vehicles owned and/or operated by the Washington Metropolitan Area Transit Authority WMATA, through the rear exit door, unless so directed by an employee or agent of the carrier.

§ 35-253. Penalties.

~~Violation of § 35-251(b) shall be punishable by a fine of not less than \$10 nor more than \$50 for a 1st offense and by a fine of not less than \$50 nor more than \$100 or by imprisonment for not more than 10 days or both for each 2nd or subsequent offense. A violation of § 35-251(c) or~~

~~(d) shall be punishable by a fine of not more than \$300, imprisonment of not more than 90 days, not fewer than 30 hours of community service, or a combination of any 2 penalties, except that imprisonment and community service shall not be imposed together. A violation of § 35-216 shall be punishable by a fine of not more than \$300, by imprisonment for not more than 10 days, or both. All prosecutions under §§ 35-216 and 35-251 to 35-253 shall be brought by the Corporation Counsel.~~

(a) Except as provided in subsection (b)(1) of this section, a violation of section 2(b) or section 3 shall be punishable by a civil fine of not more than \$50.

(b)(1) A violation of section 2(b)(6), (c) or (d) shall be punishable by a fine of not more than \$300, imprisonment of not more than 90 days, not fewer than 30 hours of community service, or a combination of any 2 penalties, except that imprisonment and community service shall not be imposed together.

(2) The fine set forth in this subsection shall not be limited by section 101 of the Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 2-3571.01 *et seq.*).

(3) All prosecutions under this subsection shall be brought by the Attorney General for the District of Columbia.

ATTACHMENT H

1 Committee Print
2 B22-0408
3 Committee on the Judiciary & Public Safety
4 October 4, 2018
5
6

7 A BILL
8

9 B22-0408
10

11 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
12
13
14
15
16

17 To amend the Omnibus Public Safety and Justice Amendment Act of 2009 to provide that fare
18 evasion does not constitute unlawful entry of a motor vehicle; to amend the District of
19 Columbia Theft and White Collar Crimes Act of 1982 to provide that fare evasion does not
20 constitute theft; to amend the Act to Regulate Public Conduct on Public Passenger Vehicles
21 to clarify unlawful conduct on passenger vehicles, and to decriminalize and modify the
22 penalties for fare evasion and other unlawful conduct on passenger vehicles.
23

24 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
25 act may be cited as the "Fare Evasion Decriminalization Amendment Act of 2018".

26 Sec. 2. Section 102 of the Omnibus Public Safety and Justice Amendment Act of 2009,
27 effective December 10, 2009 (D.C. Law 18-88; D.C. Official Code § 22-1341), is amended by
28 adding a new subsection (d) to read as follows:

29 “(d) A violation of section 3 of the Act to Regulate Public Conduct on Public Passenger
30 Vehicles, effective February 22, 1978 (D.C. Law 2-40; D.C. Official Code § 35-252), shall not
31 constitute a violation of this section.”.

32 Sec. 3. Section 111 of the District of Columbia Theft and White Collar Crimes Act of 1982,
33 effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3211), is amended by
34 adding a new subsection (d) to read as follows:

35 “(d) A violation of section 3 of the Act to Regulate Public Conduct on Public Passenger
36 Vehicles, effective February 22, 1978 (D.C. Law 2-40; D.C. Official Code § 35-252), shall not
37 constitute a violation of this section.”.

38 Sec. 4. The Act to Regulate Public Conduct on Public Passenger Vehicles, effective
39 September 23, 1975 (D.C. Law 1-18; codified in scattered cites of the D.C. Official Code), is
40 amended as follows:

41 (a) Section 2 (D.C. Official Code § 35-251) is amended as follows:

42 (1) Subsection (a) is amended by striking the phrase “Authority;” and inserting the
43 phrase “Authority (“WMATA”);” in its place.

44 (2) Subsection (b) is amended to read as follows:

45 “(b) It is unlawful for any person, either while aboard a public passenger vehicle for hire
46 with a capacity for seating 12 or more passengers, including vehicles owned or operated by
47 WMATA; or while aboard a rail transit car owned or operated by WMATA; or while within a rail
48 transit station owned or operated by WMATA, to:

49 “(1) Smoke or carry a lighted or smoldering pipe, cigar, or cigarette;

50 “(2) Consume food or beverages;

51 “(3) Spit;

52 “(4) Discard litter;

53 “(5) Play any radio, musical instrument, or similar device, unless it is connected to
54 an earphone that limits the sound to the individual user;

55 “(6) Carry any flammable or combustible liquids, explosives, acids, or similar item
56 inherently dangerous or offensive to others;

57 “(7) Carry any animals, except for guide dogs properly harnessed and small animals
58 properly contained;

59 “(8) Stand in front of the line marked on the forward end of the floor of any bus or
60 otherwise conduct themselves in such a manner as to obstruct the vision of the operator;

61 “(9) Operate or chain to any fence, tree, railing, or other structure not specifically
62 designated for such use, skateboards, rollerblades, roller skates, non-motorized scooters, bicycles,
63 tricycles, or unicycles; or

64 “(10) Park, operate, carry, wheel, or chain to any fence, tree, railing, or other
65 structure not specifically designated for such use, mopeds, motorbikes, or any similar vehicle.”.

66 (3) Subsection (c) is amended by striking the phrase “car which is transporting
67 passengers within the District of Columbia,” and inserting the phrase “car,” in its place.

68 (b) Section 3 (D.C. Official Code § 35-252) is amended to read as follows:

69 “Sec. 3. Failure to pay fare or to present valid transfer; entry by rear door prohibited.

70 “Except in emergency circumstances, no person shall knowingly:

71 “(1) Take the following actions without paying the established fare or presenting a
72 valid transfer:

73 “(A) Board a public or private passenger vehicle for hire, including vehicles
74 owned or operated by the Washington Metropolitan Area Transit Authority (“WMATA”);

75 “(B) Board a rail transit car owned or operated by WMATA; or

76 “(C) Enter or leave the fare-paid area of a rail transit station owned or
77 operated by WMATA; or

78 “(2) Board a public or private passenger vehicle for hire, including vehicles owned
79 or operated by WMATA, through the rear exit door, unless so directed by an employee or agent
80 of the carrier.”.

81 (c) Section 5 (D.C. Official Code § 35-253) is amended to read as follows:

82 “Sec. 5. Penalties.

83 “(a) Except as provided in subsection (b)(1) of this section, a violation of section 2(b) or
84 section 3 shall be punishable by a civil fine of not more than \$50.

85 “(b)(1) A violation of section 2(b)(6), (c) or (d) shall be punishable by a fine of not more
86 than \$300, imprisonment of not more than 90 days, not fewer than 30 hours of community service,
87 or a combination of any 2 penalties, except that imprisonment and community service shall not be
88 imposed together.

89 “(2) The fine set forth in this subsection shall not be limited by section 101 of the
90 Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 19-
91 317; D.C. Official Code § 2-3571.01 *et seq.*).

92 “(3) All prosecutions under this subsection shall be brought by the Attorney
93 General for the District of Columbia.”.

94 Sec. 5. Fiscal impact statement.

95 The Council adopts the fiscal impact statement in the committee report as the fiscal impact
96 statement required by section 4a of the General Legislative Procedures Act of 1975, approved
97 October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

98 Sec. 6. Effective date.

99 This act shall take effect following approval by the Mayor (or in the event of veto by the
100 Mayor, action by the Council to override the veto), a 30-day period of congressional review as

101 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24,
102 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
103 Columbia Register.